

# EXHIBIT

4

# **FREEDOM COURT REPORTING**

<p>1 IN THE UNITED STATES DISTRICT COURT  2 FOR THE MIDDLE DISTRICT OF ALABAMA  3 EASTERN DIVISION  4  5 CIVIL ACTION NO.: 3:05-CV-0681-C  6  7 EMORY STEVE BROWN,  8 Plaintiff,  9 vs.  10 CLAIMS MANAGEMENT, INC.,  11 Defendants.  12 DEPOSITION OF: EMORY S. BROWN  13 11:25 A.M.  14 APRIL 10, 2006  15  16 In accordance with Rule 5(d) of The  17 Alabama Rules of Civil Procedure, as  18 Amended, effective May 15, 1988, I, Cindy  19 C. Goldman, am hereby delivering to  20 Mr. Jeffrey A. Brown the original  21 transcript of the oral testimony taken on  22 the 10th day of April, 2006.  23</p>	<p>1  2  3  4 STIPULATIONS  5 (continued)  6  7 IT IS FURTHER STIPULATED AND AGREED  8 that it shall not be necessary for any  9 objections to be made by counsel to any  10 questions except as to form or leading  11 questions, and that counsel for the  12 parties may make objections and assign  13 grounds at the time of trial or at the  14 time said deposition is offered in  15 evidence or prior thereto.  16  17 IT IS FURTHER STIPULATED AND AGREED  18 that the notice of filing of the  19 deposition is waived.  20  21  22  23</p>
<p>1  2  3 STIPULATIONS  4  5 IT IS STIPULATED AND AGREED by and  6 between the parties through their  7 respective counsel that the deposition of  8 Emory S. Brown, a witness in the  9 above-entitled cause may be taken before  10 Cindy C. Goldman, a Court Reporter and  11 Notary Public for the State of Alabama,  12 at 739 Main Street, Roanoke, Alabama, on  13 the 10th day of April, 2006, commencing  14 at 11:25 a.m., pursuant to the Alabama  15 Rules of Civil Procedure.  16  17 IT IS FURTHER STIPULATED AND AGREED  18 that the signature to and the reading of  19 the deposition by the witness is waived,  20 the deposition to have the same force and  21 effect as if full compliance had been had  22 with all laws and rules of court relating  23 to the taking of the depositions.</p>	<p>1  2  3  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23</p>

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12                  (No exhibits were marked for		
13                  identification, offered, or		
14                  attached to the deposition.)		
15		
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1                  I, Cindy C. Goldman, a Court		
2                  Reporter and Notary Public for the State		
3                  of Alabama, acting as Commissioner,		
4                  certify that there came before me at 739		
5                  Main Street, Roanoke, Alabama, on April		
6                  10th, 2006, beginning at 11:25 a.m., Emory		
7                  S. Brown, witness in the above cause, for		
8                  oral examination, whereupon the following		
9                  proceedings were had:		
10		
11                  EMORY S. BROWN		
12                  Having been first duly (affirmed) sworn,		
13                  testified as follows:		
14                  COURT REPORTER: Usual		
15                  Stipulations?		
16                  MR. BROWN: This is the		
17                  discovery deposition of Emory Steve		
18                  Brown, taken pursuant to the Federal		
19                  Rules of Civil Procedure, utilized for		
20                  all purposes allowed thereunder.		
21		
22                  EXAMINATION BY MR. BROWN:		
23                  Q. Mr. Brown, good morning.		

2 (Pages 5 to 8)

367 VALLEY AVENUE  
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

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<p>1 A. Yeah. I had an artificial 2 artery put in my leg and had a stint put 3 in my heart too.</p> <p>4 Q. So, if you need to take a break, 5 just let me know. Tell me first off, 6 what is your home phone number?</p> <p>7 A. I don't have a home phone 8 number. I haven't had one in six or 9 seven years. I use my mother-in-law's, 10 next door neighbor's. That's my 11 mother-in-law. I use her phone.</p> <p>12 Q. Okay.</p> <p>13 A. (334)863-6195. She lives just 14 right down the road from me.</p> <p>15 Q. All right. Do you have a cell 16 phone?</p> <p>17 A. Huh-uh.</p> <p>18 Q. That's no?</p> <p>19 A. I don't have no phone.</p> <p>20 Q. If you have to conduct any 21 business utilizing a telephone, you got 22 to -- this is your mother-in-law's?</p> <p>23 A. Mother-in-law. Either that or</p>	<p>1 and you didn't have any conversations 2 with anybody other than by telephone 3 about your surgery and your shoulder; is 4 that right?</p> <p>5 A. Other than Victoria from 6 workman's comp.</p> <p>7 Q. Okay. And she would -- did she 8 ever call you?</p> <p>9 A. Yeah, she would call.</p> <p>10 Q. Okay. How would she call you?</p> <p>11 A. On my mother's phone.</p> <p>12 Q. Okay.</p> <p>13 A. Mother-in-law's phone number.</p> <p>14 Q. And would they leave a message?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And then you'd call back?</p> <p>17 A. And she'd come tell me, and I'd 18 go call them back if needed to get in 19 touch with me.</p> <p>20 Q. Okay.</p> <p>21 A. When they set up my doctor's 22 appointments and first one thing and then 23 the other.</p>
Page 10	Page 12
<p>1 my mother's house.</p> <p>2 Q. What's your mom's phone number?</p> <p>3 A. 863-6348.</p> <p>4 Q. Okay.</p> <p>5 MR. TINNEY: You can continue 6 on, Jeff. I'll be right back.</p> <p>7 Q. (By Mr. Brown) And if you -- do 8 you ever make any phone calls from any 9 businesses or anything like that?</p> <p>10 A. No. I hardly ever even use the 11 phone unless I have to call the lawyer's 12 office or the doctors or something 13 another like that. That's about the only 14 time I use one.</p> <p>15 Q. Well, in this particular case, 16 we're here predominantly talking about 17 conversations that you did or may have 18 had with somebody out at CMI. Where 19 would you have made those phone calls 20 from?</p> <p>21 A. I made all my phone calls from 22 my mother-in-law's house.</p> <p>23 Q. Okay. All right. So, any --</p>	<p>1 Q. Did you talk to her a pretty 2 good bit, Victoria?</p> <p>3 A. Yeah, I talked to her just about 4 every week because I stayed in pain so 5 long, and he wanted to -- that doctor 6 they sent me to wanted to do surgery on 7 November the 1st, and she kept putting it 8 off, kept wanting two more doctors to see 9 the MRIs. And she just kept putting it 10 off and putting it off. I'd call every 11 week, and she'd say, "We're working on 12 it. We're working on it." But I was 13 still in pain, having to work every 14 night. They was wanting me to come up 15 there with one arm every night.</p> <p>16 Q. Well, we'll talk about some of 17 those conversations in a little bit 18 greater detail as we get into this.</p> <p>19 What is your address?</p> <p>20 A. I get all my mail at Post Office 21 Box 145.</p> <p>22 Q. Well, I was going to ask you the 23 street address of where you live.</p>

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<p>1 A. I live on 460 Pine Valley Drive.  2 But I don't get any mail there. I get  3 all my mail at the Post Office.  4 Q. And is that Roanoke?  5 A. Uh-huh (affirmative). Post  6 Office Box 145, Roanoke 36274.  7 Q. 145?  8 A. Uh-huh. That's where I get all  9 my mail.  10 Q. And, if you would, says yeses or  11 no's. Uh-huh's and huh-uh's are kind of  12 hard to tell --  13 A. Okay.  14 Q. -- what you said later on down  15 the road. How long have you lived on  16 Pine Valley Drive?  17 A. I've been over there about 22  18 years.  19 Q. Who lives there with you?  20 A. Just my wife. My kids are  21 grown.  22 Q. That's Deborah?  23 A. Deborah Brown.</p>	<p>1 Q. Both of them live in Randolph  2 County?  3 A. Yeah.  4 Q. Is Taylor's Crossroads before  5 you get to Wedowee?  6 A. Yeah. You go up here and hit --  7 ain't that 87 up that way?  8 MR. TINNEY: 59.  9 THE WITNESS: 59. And you go up  10 there to the first cross road and take a  11 left, and he lives out there on the left.  12 Q. (By Mr. Brown) All right.  13 That's fine. Where did you live before  14 Pine Valley Drive?  15 A. I lived on Stone Avenue.  16 Q. Is that here?  17 A. Yeah, right here in Roanoke.  18 Q. How long did you live there?  19 A. My kids was really little. They  20 was just starting school. So, I imagine,  21 three or four years there. And then we  22 moved over to the trailer park, and I've  23 been at the trailer park ever since.</p>
Page 14	Page 16
<p>1 Q. What are your children's name?  2 A. I've got Steven Daniel Brown and  3 Benjamin Adam Brown.  4 Q. How old is Steven?  5 A. He's 30. And the baby is 29.  6 Q. Do they both live in Roanoke?  7 A. Yeah.  8 Q. Okay. What is your date of  9 birth?  10 A. 8/24/55. Well, my youngest son  11 lives up there close to Taylors  12 Crossroads. It's a little outside of  13 Roanoke.  14 Q. That's north of here, though;  15 right?  16 A. Yeah. Taylors Crossroads is  17 where he lives. And my oldest son lives  18 on -- I can't think of the name of the  19 road.  20 Q. That's okay.  21 A. Both of them is just a little  22 bit outside of Roanoke, but they're right  23 close to Roanoke.</p>	<p>1 Q. Okay. So, the Pine Valley Drive  2 is a mobile home?  3 A. Yeah, it's a mobile home park.  4 Q. And do you own the mobile home?  5 A. Yeah. We're paying on it.  6 Q. Tell me the highest -- and this  7 is -- I'll ask you some questions that  8 are kind of personal, and they're not  9 intended to be offensive or anything like  10 that.  11 A. All right.  12 Q. But what would be the highest  13 educational level you got?  14 A. I went to the ninth grade and  15 quit school in the ninth grade and went  16 to work.  17 Q. Where did you go to school?  18 A. Woodland. Woodland, Alabama.  19 Q. And when you got through there,  20 have you gotten any kind of a GED or  21 anything like that?  22 A. No. That's the only education  23 I've got.</p>

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<p>1 Q. And, again, not to be offensive, 2 but you do read and write?</p> <p>3 A. Oh, yes.</p> <p>4 Q. Okay. When you got out of 5 school, where was the first place you 6 went to work?</p> <p>7 A. I went to work at Handley Mills 8 when I was 16. Back then you could go to 9 work when you was 16.</p> <p>10 Q. And what was your job there?</p> <p>11 A. I laid up fillings, stripped 12 quills, doff cloth, a little bit of 13 everything.</p> <p>14 Q. Say that again. Slow down and 15 tell me that again.</p> <p>16 A. Stripped quills.</p> <p>17 Q. What's stripping a quill mean?</p> <p>18 A. That means you've got some 19 thread left on them, and you have to put 20 it in this machine, and it strips the 21 thread off of it.</p> <p>22 Q. Okay.</p> <p>23 A. And doffing means when this big</p>	<p>1 right off the street down here?</p> <p>2 A. It's off of 431. And I worked 3 there --</p> <p>4 Q. And does Candlewick Yarn -- is 5 that exactly what it sounds like, they 6 make wicks for candles?</p> <p>7 A. They make carpet for houses and 8 cars.</p> <p>9 Q. And how long did you work for 10 Candlewick?</p> <p>11 A. About 22, nearly 23 years.</p> <p>12 Q. What was your job there?</p> <p>13 A. I worked in the shipping 14 department, packing yarn, inspecting 15 yarn, driving a forklift.</p> <p>16 Q. And when you left there, where 17 did you go?</p> <p>18 A. I went to Asplundh Tree 19 Surgeons. I worked with them a little 20 while. Then I went to --</p> <p>21 Q. How long did you work at 22 Asplundh?</p> <p>23 A. I didn't work with them about</p>
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<p>1 roll gets on there, you have to take the 2 roll off and put it on a dolly and push 3 it off. First one thing and then 4 another. When I was 16, that's what I 5 would do.</p> <p>6 Q. And that's called dolly and 7 claw?</p> <p>8 A. Yeah. You doff it. You had to 9 doff the whole roll off.</p> <p>10 MR. TINNEY: I think it's 11 d-o-l-p-h, I believe.</p> <p>12 Q. (By Mr. Brown) Okay.</p> <p>13 A. Yeah. You had to doff it off 14 onto a dolly and roll it downstairs.</p> <p>15 Q. All right. And how long did you 16 work at Handley Mills?</p> <p>17 A. Until I was 18. I worked there 18 two years.</p> <p>19 Q. Where did you go to work after 20 that?</p> <p>21 A. I went to Candlewick Yarn when I 22 was 18.</p> <p>23 Q. And that's the place that's</p>	<p>1 three or four months. After I lost my 2 job at Candlewick after 20-something 3 years, I was just from here to yonder.</p> <p>4 Q. Why did you lose your job at 5 Candlewick?</p> <p>6 A. Well, they claim I was out four 7 times in a six-month period. And they 8 was getting rid of a bunch of people, so 9 they got me.</p> <p>10 Q. You didn't have to file any kind 11 of a claim or lawsuit, did you?</p> <p>12 A. No.</p> <p>13 Q. Okay. What did you do at tree 14 surgeons folks?</p> <p>15 A. Put the wood in the chipper and 16 chipped all the wood up. After they cut 17 it down on the ground, I chipped all the 18 wood up and run the power saw.</p> <p>19 Q. Did you ever have any on-the-job 20 injuries there?</p> <p>21 A. Huh-uh (negative).</p> <p>22 Q. Is that no?</p> <p>23 A. No, I never had any injuries on</p>

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1 that job. 2 Q. How about at Candlewick Yarn? 3 A. No, not serious injuries. 4 Q. How about Handley Mills? 5 A. No. 6 Q. When you left Asplundh, where 7 did you go? 8 A. I went to Blue Water 9 Construction Company. 10 Q. What did you do there? 11 A. I was a welder's helper. 12 Q. How long were you there? 13 A. Well, the job -- it wasn't but a 14 six-month job. It was a construction job 15 that lasted six months. 16 Q. So, after that you got laid off 17 because the job ended? 18 A. Yeah, the job played out. 19 Q. Did you ever get hurt there? 20 A. No. 21 Q. After that, you went to work at 22 Wal-Mart; correct? 23 A. I went to work at Wal-Mart in	1 because my leg and shoulder wouldn't let 2 me do it. They just put down on the 3 reason, medical reasons. 4 Q. And when was that? 5 A. March of 2005 after I had my 6 artery done in my leg. I never would 7 have been able to use it right, so I had 8 to quit. 9 Q. Your marriage to Ms. Brown, is 10 that the only marriage? 11 A. I've been married -- November 12 will be 32 years. 13 Q. Congratulations. 14 A. I got married, she was 17 and I 15 was 19. 16 Q. In today's age, that's something 17 to be very proud of. 18 A. Yeah. 19 Q. Have you ever had any injuries 20 to your right shoulder before? 21 A. No. 22 Q. Have you ever injured your left 23 shoulder?
Page 22	Page 24
1 2001. 2 Q. Are you still employed at 3 Wal-Mart? 4 A. No. After I had this surgery on 5 my legs and a stint put in my heart and 6 everything -- my legs won't let me walk. 7 I can't walk very far at one time. And 8 they went ahead and give me a medical -- 9 may as well -- medical term -- 10 Q. But you're out on like a leave 11 of absence; right? 12 A. No. I don't work there anymore. 13 Q. Okay. So, you -- 14 A. Between my shoulder and my legs, 15 I couldn't work. 16 Q. All right. But that was -- you 17 don't have a problem with your having to 18 leave Wal-Mart, do you? 19 A. No. They understood that I 20 couldn't do it. 21 Q. Okay. So, you had to quit the 22 job? 23 A. I had to quit the job, yeah.	1 A. Huh-uh (negative). But he told 2 me, though, you know, the way my 3 shoulders was, you know, what I done at 4 Candlewick for all them years, it would 5 be easy to tear it up so be careful -- 6 real careful with it. 7 Q. Who told you that? 8 A. The doctor. The one that done 9 the surgery on my shoulder. 10 Q. Dr. Howorth did? 11 A. Dr. Howorth. 12 Q. Howorth. Okay. 13 A. Dr. Howorth is the one they sent 14 me to. 15 Q. Now, after he did the surgery, 16 he told you what? 17 A. He told me that it would be easy 18 because the way I used my hands and 19 everything all these years packing in 20 yarn, 10, 15, 20 pounds, he said I'll 21 just -- like my hinges and my elbows and 22 shoulders was like, you know -- you know, 23 in bad shape from using them all these

6 (Pages 21 to 24)

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<p>1 years. He just told me to be careful, 2 you know.</p> <p>3 Q. Okay.</p> <p>4 A. Before that, I hadn't had any 5 trouble.</p> <p>6 Q. Before that -- before you hurt 7 it at Wal-Mart in September of 2004, did 8 you ever have any just --</p> <p>9 A. No.</p> <p>10 Q. -- aches and pains with your 11 shoulders?</p> <p>12 A. No, not really, not more than 13 usual.</p> <p>14 Q. Did you ever have any popping or 15 creaking or anything like that?</p> <p>16 A. No, not until I tore that one 17 up.</p> <p>18 Q. Okay. Have you ever been in the 19 military?</p> <p>20 A. Huh-uh.</p> <p>21 Q. Is that a no?</p> <p>22 A. No.</p> <p>23 Q. And I know you did have one</p>	<p>1 other.</p> <p>2 A. All right.</p> <p>3 Q. So, if it's okay, let me finish 4 my question.</p> <p>5 A. Okay.</p> <p>6 Q. And then I'll let you finish 7 your answer.</p> <p>8 A. All right.</p> <p>9 Q. And that way we should be okay.</p> <p>10 Have you ever had any prior 11 accidents such as motor vehicle 12 accidents?</p> <p>13 A. I had one back in 1994.</p> <p>14 Q. All right. Did you receive any 15 injuries?</p> <p>16 A. Yeah, several stitches, knocked 17 out a few teeth.</p> <p>18 Q. Nothing with your shoulders --</p> <p>19 A. No.</p> <p>20 Q. -- or your legs or bones? Any 21 kind of a slip and fall?</p> <p>22 A. No.</p> <p>23 Q. Have you ever had any injuries</p>
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<p>1 prior bankruptcy. But that's over with; 2 correct?</p> <p>3 A. Yeah. I had it back in the 4 '80s.</p> <p>5 Q. And nothing in the last seven 6 years?</p> <p>7 A. Huh-uh (negative).</p> <p>8 Q. No. Have you ever been arrested 9 or charged with any crime?</p> <p>10 A. Nothing besides a DUI.</p> <p>11 Q. Have you ever been a plaintiff 12 in another lawsuit?</p> <p>13 A. No.</p> <p>14 Q. This is the -- have you ever 15 been a defendant --</p> <p>16 A. This is the first time I ever --</p> <p>17 Q. Have you ever been a defendant 18 in a lawsuit?</p> <p>19 A. No, sir.</p> <p>20 Q. Another thing is we're talking, 21 and it's very conversational, but because 22 she's writing everything down, we need to 23 try to make sure we don't talk over each</p>	<p>1 at home where you had to receive a lot of 2 medical treatment?</p> <p>3 A. I had appendicitis when I was 4 19. Other than that, I've always been in 5 pretty fair health.</p> <p>6 Q. Now, you did have -- you did 7 have some problems several years ago with 8 alcohol; is that right?</p> <p>9 A. Yeah, a long time ago back in 10 the '90s.</p> <p>11 Q. Okay. Are you still drinking?</p> <p>12 A. Huh-uh (negative).</p> <p>13 Q. Okay. When was the last time 14 you drank?</p> <p>15 A. The only thing I drink is n/a if 16 I drink anything, non-alcoholic beer, n/a</p> <p>17 Q. You stopped drinking when?</p> <p>18 A. '97.</p> <p>19 Q. Do you still smoke?</p> <p>20 A. Yeah, I still smoke.</p> <p>21 Q. How much?</p> <p>22 A. About a pack a day.</p> <p>23 Q. And how many years have you been</p>

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<p style="text-align: right;">Page 29</p> <p>1   smoking?</p> <p>2   A. Well, I quit a year and a half 3   before my son was born -- the last baby 4   was born, and I've been smoking ever 5   since.</p> <p>6   Q. So, 29 years?</p> <p>7   A. 29 years.</p> <p>8   Q. And had you stopped for a period 9   of time and then smoked before that?</p> <p>10   A. Yeah, I had smoked, and then I 11   quit for a year and a half.</p> <p>12   Q. And then how old were you when 13   you started smoking?</p> <p>14   A. Probably about 16.</p> <p>15   Q. And you had stopped for a year 16   and a half before your youngest was born?</p> <p>17   A. Uh-huh (affirmative).</p> <p>18   Q. Are you right-handed or 19   left-handed?</p> <p>20   A. I'm left-handed.</p> <p>21   Q. So, you're still able to write 22   okay?</p> <p>23   A. Yeah, I'm still able to write.</p>	<p style="text-align: right;">Page 31</p> <p>1   he stopped. I done it for two and a half 2   months. And every time I'd go in there 3   and do therapy, they was popping, and it 4   was hurting it, and it was killing me.</p> <p>5   And he stopped them. He told them it was 6   doing worser damage because he put screws 7   in it. And he said the screws was 8   rubbing my shoulder bone. And it was 9   hurting it worse than it was doing good 10   to it, so they stopped it.</p> <p>11   Q. All right.</p> <p>12   A. But I done it for two and a half 13   months.</p> <p>14   Q. Now, in March of 2005, you 15   started having some problems with your 16   legs?</p> <p>17   A. Yeah.</p> <p>18   Q. Okay. And tell me how that 19   started.</p> <p>20   A. Well, when I had the -- after I 21   had my surgery, the nurse recommended me 22   go to my regular doctor because my blood 23   pressure was shooting sky high. And he</p>
<p style="text-align: right;">Page 30</p> <p>1   Q. Okay. How high can you raise 2   your shoulder?</p> <p>3   A. Right here?</p> <p>4   Q. Yes, sir.</p> <p>5   A. I can get it up right along in 6   here (indicating), and I have to push it 7   on up. You know, it just don't want to 8   go.</p> <p>9   Q. Okay.</p> <p>10   A. I just can't -- I can't go up 11   with it.</p> <p>12   Q. Okay.</p> <p>13   A. I can push it up. But, you 14   know, as far as picking it up on its own, 15   I can't. It just don't want to go up.</p> <p>16   Q. And how long has it been like 17   that?</p> <p>18   A. Ever since I had the surgery on 19   it.</p> <p>20   Q. Did physical therapy help you at 21   all?</p> <p>22   A. They was hurting me worse than 23   they was helping me. That's the reason</p>	<p style="text-align: right;">Page 32</p> <p>1   said me being in pain for 63 days -- now, 2   I'm on medication. From now on -- he 3   said you won't never be able to get off 4   it. I'm on blood pressure medicine, 5   cholesterol medicine, Plavix for my 6   heart, and I have to take a nerve pill at 7   night to sleep because I can't sleep. 8   Either my leg's hurting me or my shoulder 9   is hurting me every night just about it.</p> <p>10   Q. Okay. But you --</p> <p>11   A. But I wouldn't on any medication 12   until I tore my shoulder up.</p> <p>13   Q. But you went to -- do you 14   think -- did your -- do you think your 15   shoulder caused the leg problems?</p> <p>16   A. Yeah. Yeah. They told me that 17   because my blood pressure and cholesterol 18   and everything went up so high, that 19   that's the reason I had trouble out of 20   my -- he said if you don't get surgery on 21   your legs, you're going to lose a leg.</p> <p>22   Q. What doctor told you that the 23   leg problem was related to the shoulder?</p>

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1 A. Well, Dr. Bill Caypless said my  
 2 blood pressure was -- caused my arteries  
 3 to do the way they was doing because it  
 4 shot up and wouldn't come back down.

5 Q. Okay. And what doctor told you  
 6 that your blood pressure was related to  
 7 your shoulder?

8 A. Well, he just said being in pain  
 9 for so long caused it to go up, and he  
 10 never could get it regulated.

11 Q. When did you start taking blood  
 12 pressure medication?

13 A. I went to him in February. He  
 14 recommended me to another doctor in  
 15 Opelika to do a heart catheter. Well,  
 16 when he was doing the heart catheter,  
 17 they found out I had 85 percent blockage  
 18 in my heart. So, they put a stint in it  
 19 and sent me back home. Scheduled me back  
 20 for ten days later. I went back, and  
 21 Dr. Lazenby cut me from here to there and  
 22 put an artificial artery in this whole  
 23 left leg and hit a nerve in this knee

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1 you had a stint put in your heart; right?  
 2 A. Yeah. They found out I had to  
 3 have a stint.

4 Q. Because you had 85 percent  
 5 blockage?

6 A. Yeah. Dr. Rhodes went in there  
 7 and done the heart catheter, and he found  
 8 that. And he went ahead and fixed that,  
 9 and they sent me home. Ten days later,  
 10 he sent me back to do my leg.

11 Q. Okay.

12 A. And I just ain't got no  
 13 circulation. He said they may -- I may  
 14 just be having deteriorating arteries in  
 15 my leg. They're not sure.

16 Q. Okay. But the artery condition  
 17 wasn't caused by the shoulder?

18 A. No. But he just said my blood  
 19 pressure was causing that.

20 Q. Okay. And the stint in your  
 21 heart was not caused -- the blockage  
 22 wasn't caused by the shoulder?

23 A. No. But they just -- when they

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1 (indicating). And I have no feelings  
 2 from the knee down on this leg.

3 Q. Okay. And when you say "from  
 4 here to here," they cut you from the hip  
 5 bone?

6 A. They cut me all the way across  
 7 here. Right here all the way up and  
 8 replaced this whole artery (indicating).

9 Q. Okay. All right. Right there  
 10 where your --

11 A. They cut me right across there  
 12 (indicating).

13 Q. Okay. Let the record reflect  
 14 that it's on the left leg.

15 A. Yeah, from my groin down at the  
 16 top of my knee all the way up to here  
 17 (indicating).

18 Q. Okay. And they took a vein or  
 19 an artery out of your leg?

20 A. Yeah, replaced with an  
 21 artificial artery. It's an artificial  
 22 bypass is what it was called.

23 Q. Okay. And before you did that,

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1 went in there, they just found out all --  
 2 I had all the different problems because  
 3 they couldn't find any circulation in my  
 4 legs. The first thing, he couldn't find  
 5 any circulation.

6 Q. Okay. And you understood that  
 7 that was because you had blockage in an  
 8 artery --

9 A. Yeah.

10 Q. -- going down into your leg, and  
 11 you weren't getting blood supply down  
 12 there?

13 A. I didn't even know I needed the  
 14 stint until I went in -- until he went  
 15 in.

16 Q. And that was your primary doctor  
 17 down at Woodland Clinic; is that right?

18 A. Dr. Bill Caypless sent me to  
 19 Dr. Lazenby in Opelika.

20 Q. Okay.

21 A. And him and Dr. Rhodes --  
 22 Dr. Rhodes done the stint, and  
 23 Dr. Lazenby done the artery.

9 (Pages 33 to 36)

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Page 37	Page 39
<p>1 Q. Okay. And Dr. Rhodes was at 2 Auburn Cardiology?</p> <p>3 A. Uh-huh. He's the heart doctor.</p> <p>4 Q. Okay. And you had that surgery 5 done in Opelika?</p> <p>6 A. Yeah, both of them.</p> <p>7 Q. All right. And Dr. Lazenby --</p> <p>8 A. Lazenby.</p> <p>9 Q. Lazenby.</p> <p>10 (A short discussion was had.)</p> <p>11 THE WITNESS: He said when he 12 went in my shoulder, you know, it had 13 been so long, 63 days, it was so full of 14 bursitis and everything, there wasn't 15 nothing he could do but put pins in it. 16 He couldn't laser it back. It was too 17 late.</p> <p>18 Q. (By Mr. Brown) Who said that?</p> <p>19 A. Dr. Howorth, the one that 20 workman's comp sent me to.</p> <p>21 Q. Okay. We'll talk about 22 Dr. Howorth in a minute. I'm trying to 23 keep --</p>	<p>1 the 4th, and I think the other one was 2 done on the 14th. He sent me home for 3 ten days after he done the stint. He 4 told me to rest for ten days and come 5 back and they'd do my leg.</p> <p>6 Q. So, they did the stint first and 7 then did --</p> <p>8 A. Then the leg.</p> <p>9 Q. Now, you've had problems with --</p> <p>10 documented problems with some blood 11 pressure since like '99 or 2000, back to 12 there; is that right?</p> <p>13 A. No. I wasn't taking any kind of 14 medicine until I hurt my shoulder. I 15 wasn't on no kind of medication. But 16 when I got there to do the surgery, it 17 was running 150 over 100, and they was 18 worried about me having a stroke or a 19 heart attack.</p> <p>20 Q. Okay. Do you remember having a 21 stress test back in 2002?</p> <p>22 A. Yeah, sure did. They thought I 23 had a blockage in my heart then, but come</p>
Page 38	Page 40
<p>1 A. Yeah.</p> <p>2 Q. I try to keep them all straight. 3 I still want to talk about Woodland Rural 4 Health Clinic. That's your primary 5 physician?</p> <p>6 A. That's the one I go to, yeah.</p> <p>7 Q. All right. And that's when -- 8 you first went down there having problems 9 with your legs in about February of 2005; 10 right?</p> <p>11 A. Yeah. That's when he sent me to 12 them, yeah.</p> <p>13 Q. And he is the one who referred 14 you to Dr. Lazenby?</p> <p>15 A. Uh-huh (affirmative).</p> <p>16 Q. All right. And that's also 17 Dr. Caypless?</p> <p>18 A. Dr. Bill Caypless.</p> <p>19 Q. Okay. Bill Caypless,</p> <p>20 C-a-y-p-l-e-s-s. And then you had that 21 surgery on your left leg about a year 22 ago, March of '05?</p> <p>23 A. Yeah. Had one of them done on</p>	<p>1 to find out, it was just closed up. And 2 they ballooned them out and opened them 3 back up.</p> <p>4 Q. Okay. So, you had like an 5 angioplasty then?</p> <p>6 A. Yeah, uh-huh. In 2002, I think.</p> <p>7 Q. Who did that?</p> <p>8 A. Dr. Lazenby.</p> <p>9 Q. Same one who did --</p> <p>10 A. Uh-huh (affirmative).</p> <p>11 Q. -- the surgery on your leg?</p> <p>12 A. Uh-huh (affirmative).</p> <p>13 Q. Is that yes?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And then after you've had 16 both of the surgeries, your heart and 17 your leg, you have not been able to go 18 back to work?</p> <p>19 A. No.</p> <p>20 Q. And that's because you can't 21 stand up or walk for a period of time?</p> <p>22 A. I can't stand up and walk, and I 23 couldn't use my shoulder. So, there was</p>

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Page 41	Page 43
1 no need, you know. 2 Q. Well, before you had the surgery 3 on your leg and your heart, you were 4 working light duty; right? 5 A. Oh, yeah. They had me up there 6 working with a sling. I was just working 7 light duty, door greeting. 8 Q. Okay. But you were still able 9 to do that light-duty job? 10 A. Yeah. Until I had my surgery on 11 my leg, yeah. 12 Q. So, if you had not had the 13 surgery on your leg or the stint put in 14 your heart, you could still be a greeter? 15 A. Well, he told me, though, if I 16 didn't have it done, though, I could lose 17 a leg. 18 Q. Well, I understand that. I'm 19 not suggesting that you shouldn't have 20 had the surgery done on your leg. 21 A. Yeah. 22 Q. But if your leg had not bothered 23 you --	1 told you that the shoulder -- that the 2 leg circulation problem and the heart 3 stint affected your ability to heal in 4 the shoulder? 5 A. No, they didn't say nothing 6 about it affecting it. He just told me 7 when he went in it was so messed up that 8 he had to put plastic -- put pins in it 9 and said it never would be right. 10 Q. Okay. Now, you got hurt at 11 Wal-Mart in September of 2004? 12 A. Uh-huh, September 2004. 13 Q. And it was, I think, the 28th or 14 maybe early in the morning? 15 A. 27th or 28th. 16 Q. Okay. It was about 4:00 o'clock 17 in the morning? 18 A. Uh-huh (affirmative). 19 Q. You were working the overnight 20 shift? 21 A. Yeah. 22 Q. And you were unloading a truck? 23 A. Yeah, unloading a produce truck.
Page 42	Page 44
1 A. Yeah. 2 Q. Just pretend that it -- your leg 3 never had that problem. 4 A. Yeah. 5 Q. You could still be working as a 6 greeter? 7 A. If my legs would let me, yeah. 8 Q. Okay. That's what I was curious 9 about. 10 A. Yeah. 11 Q. All right. So, the reason that 12 you had to quit was more your leg? 13 A. And the shoulder. 14 Q. Okay. But more your leg than 15 your shoulder; right? 16 A. Yeah. 17 Q. That was yes? 18 A. Yes. 19 Q. Okay. How are your legs now? 20 A. Oh, they hurt me every day. My 21 ankles and knee swells up on me every 22 night. 23 Q. Have any of the doctors ever	1 Q. Since the day you hurt your 2 shoulder, have you kept a written diary 3 at home? 4 A. No. 5 Q. And you haven't taken any kind 6 of notes? 7 A. Nothing except all my doctor's 8 names and stuff like that. 9 Q. Okay. Then do you keep any kind 10 of a calendar indicating when you've been 11 to the doctors and conversations with 12 anybody? 13 A. No, not lately. 14 Q. Have you ever? 15 A. Not besides what I brought 16 Mr. Tinney. 17 Q. Okay. Did you bring Mr. Tinney 18 a calendar or anything that writes some 19 of those dates down? 20 A. No, I just got the medical 21 report. 22 Q. You just brought him bills and 23 things that you've received from the

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<p style="text-align: center;">Page 45</p> <p>1 doctors; is that right?    2 A. Medical reports, yeah.    3 Q. Okay. Now, you were working,    4 unloading a produce truck on the 28th?    5 A. Uh-huh, yes.    6 Q. Tell me how the accident    7 happened.    8 A. Well, the truck backed in. And    9 it was supposed to have been stretched    10 wrapped and tied down. And it was    11 throwed all out in the floor. And we was    12 trying to salvage what produce we could.    13 And I had a pallet, and another boy named    14 Josh Denton was on the other side of the    15 pallet. He was picking up. I was    16 picking up the 40-pound sacks of    17 potatoes. I got them stacked up a little    18 over waist high. And they went to    19 falling. I tried to catch them, and they    20 just pinned me up against the wall and    21 popped my shoulder.    22 Q. Okay. And when you say,    23 "they're supposed to be stretch wrapped,"</p>	<p style="text-align: center;">Page 47</p> <p>1 A. He was the assistant manager --    2 night manager at night that night. So,    3 we went to his office and filled out a    4 report.    5 Q. That was like the first report    6 of the incident or something like that?    7 A. Yeah, just as soon as it    8 happened.    9 Q. Okay. And did you go home?    10 A. No. He got a man off the floor    11 crew to take me out to the emergency room    12 and dropped me off and left me.    13 Q. Okay.    14 A. My wife got off work and didn't    15 even know where I was at.    16 Q. Who took you to the hospital?    17 A. Boy off the floor crew, Glen --    18 I don't -- I can't remember his last    19 name. His name was Glen. He got him to    20 take me out there and put me out.    21 Q. Okay. Well, did that make you    22 mad?    23 A. Well, I thought, you know,</p>
<p style="text-align: center;">Page 46</p> <p>1 does that mean they're supposed to be    2 stacked up and wrapped like in cellophane    3 plastic or something?    4 A. They're supposed to be wrapped    5 all the way up and tied down. They was    6 not wrapped. They was just throwed all    7 out in the truck.    8 Q. Okay. So, y'all were trying to    9 clean up a mess?    10 A. We was trying to salvage -- we    11 was trying to clean up a mess.    12 Q. And you immediately notified    13 somebody, didn't you?    14 A. Yeah. Josh was about as far as    15 from me to her. We was right side by    16 side. He heard it when it popped. And    17 the supervisor was on -- he was on the    18 truck about a minute or two after it    19 happened.    20 Q. Who was that?    21 A. Chris Cheatwood.    22 Q. And is he one of the assistant    23 managers?</p>	<p style="text-align: center;">Page 48</p> <p>1 somebody from management should have went    2 with me, you know.    3 Q. Okay. But they did send you to    4 the hospital. And that was Randolph    5 Medical Center.    6 A. Yeah.    7 Q. Is that the hospital up in    8 Wedowee?    9 A. Right out here. Right out here    10 on 22.    11 Q. All right.    12 A. And they x-rayed it. And he    13 said he didn't see any broke bone. He    14 said it could be just be a pulled muscle.    15 And they give me a shot. And my wife got    16 off work at 8:00, and she come and picked    17 me up after they told her at Wal-Mart    18 where I was at.    19 Q. Okay. So, she want out --    20 A. She didn't even know where I was    21 at.    22 Q. Did she go out to the store?    23 A. Yeah, she went to the store,</p>

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<p>1 looking for me to pick me up.  2 Q. Okay.  3 A. Because she worked at night.  4 Q. So, y'all both worked at night?  5 A. Yeah. She worked at Candlewick.  6 She dropped me off and then she'd come  7 pick me up in the morning. She didn't  8 even know I was out there. Nobody  9 bothered to call her and tell her I was  10 out there or nothing.  11 Q. So, she came and got you at  12 the -- does that make you mad that nobody  13 called your wife?  14 A. Yeah, it really -- you know, she  15 come up there looking for me, and they  16 said, "He's in the emergency room." And  17 she didn't -- she freaked out because she  18 didn't know what was going on. You know,  19 nobody let her know.  20 Q. How long did you have to wait  21 for her to come get you at the emergency  22 room?  23 A. I got up at the emergency room</p>	<p>1 sent me to a company doctor, Dr. Shirah,  2 on the next following Monday.  3 Q. Okay. What day of the week did  4 you get hurt, do you remember?  5 A. I believe it was on a Wednesday  6 night.  7 Q. Okay.  8 A. Because I know I worked Sunday  9 through -- Sunday through Thursdays. I  10 think it was on a Tuesday night or a  11 Wednesday night, the middle of the week.  12 MR. BROWN: Can we take a few  13 minutes?  14 (A short break was taken.)  15 Q. (By Mr. Brown) All right. Well,  16 you went back by the store and dropped  17 off the paperwork?  18 A. Yeah.  19 Q. And then you went home for a  20 couple of days?  21 A. Yeah, because I didn't have but  22 two more days left in that week.  23 Q. Okay. And then you went to a</p>
<p>1 at 5:00, and she got off work at 6:00.  2 She was out there a little after 6:00.  3 Q. Had you already been seen by the  4 doctor when she got there?  5 A. They done the x-ray and then  6 give me a shot of Demerol.  7 Q. So, how long were you waiting on  8 her before she got there?  9 A. Probably 45 minutes to an hour.  10 Q. Okay. So, it wasn't too bad?  11 A. And then I had to bring  12 paperwork back to Wal-Mart.  13 Q. So, y'all left the hospital and  14 went back to Wal-Mart?  15 A. Yeah.  16 Q. Okay. Did you go inside and  17 give the documents to somebody?  18 A. Yes.  19 Q. Who did you give them to?  20 A. Personnel manager and the  21 manager. They told me to go ahead and  22 take the next two days off, you know, to  23 see how it was going to do. And they</p>	<p>1 doctor?  2 A. They sent me to Dr. Shirah on  3 Monday morning.  4 Q. Okay. Did you have any other  5 appointments before that that you missed  6 or that you couldn't go to?  7 A. No. They just told me to take  8 two days off and they would set me up  9 with Dr. Shirah on Monday morning.  10 Q. Okay. Who called you and told  11 you to go see Dr. Shirah?  12 A. Charlotte Woody. She's the  13 personnel manager. She set it up, the  14 appointment up.  15 Q. And after you talked to Ms.  16 Woody and she told you to go see  17 Dr. Shirah, did you have any other  18 contact with her, or did you start  19 working with the people out at CMI?  20 A. I didn't have -- I took the two  21 days off and then went out there at his  22 office on Monday. She called and made me  23 an appointment and told me at home --</p>
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<p style="text-align: right;">Page 53</p> <p>1 called me at home and told me what time 2 the appointment was -- to be there. 3 Q. All right. And then you went 4 out there to see him on, I think, October 5 the 4th or October the 1st? 6 A. It was on a Monday. 7 Q. Okay. 8 A. And he treated me -- he told me 9 to take a week off and treated me for a 10 muscle pull. 11 Q. Okay. And gave you some 12 medication; right? 13 A. Yeah. He gave me something for 14 infection and some pain medicine. 15 Q. Okay. And that was the first 16 time you saw him was on October the 4th? 17 A. Yeah, it was on a Monday. 18 Q. Okay. 19 A. He treated me for a week. 20 Q. And my question was: After 21 Ms. Woody called you and told you to go 22 see Dr. Shirah, who scheduled the rest of 23 your doctor's appointments and who did</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. All right. So, you went to 2 Dr. Shirah on the 4th? 3 A. Uh-huh (affirmative). 4 Q. And he said that it was -- he 5 would keep you out of work for four days? 6 A. Uh-huh (affirmative). 7 Q. And he said that it was a 8 shoulder sprain; right? 9 A. He said it was either that or a 10 pulled muscle. 11 Q. Pulled muscle. He gave you some 12 Motrin and some other things for pain; 13 correct? 14 A. Yeah. 15 Q. All right. And you went back on 16 the 8th, which was four days later? 17 A. Yeah. 18 Q. And that's when he said that you 19 could go back to work on the 10th doing 20 light duty? 21 A. Yeah. And come back to see him 22 on that Friday. 23 Q. Okay. And you went back on the</p>
<p style="text-align: right;">Page 54</p> <p>1 you have contact with about what doctor 2 to go to next? 3 A. Well, after I went to him for a 4 week, he told me to come back the next 5 following week and he'd look at me again. 6 And I went back the next following week. 7 And he told me if they had anything I 8 could do with one arm, not to pick up 9 nothing over five pounds, and I could go 10 back and work with one arm. So, I went 11 back. They put me to zoning, stuff like 12 that. 13 Q. What is zoning? 14 A. When you pull all your stuff on 15 your shelf to the front and everything 16 and straighten stuff out. 17 Q. Okay. 18 A. But I was using this left arm so 19 much, after two days, I couldn't even use 20 it, it was hurting so bad. 21 Q. All right. 22 A. So, they put me to door 23 greeting.</p>	<p style="text-align: right;">Page 56</p> <p>1 15th? 2 A. That's right. 3 Q. About a week later? 4 A. Yeah. 5 Q. You were still having pain? 6 A. Yes. 7 Q. And that's the first time he 8 thought that it could possibly be a tear; 9 right? 10 A. Yeah. He said we need to go get 11 an MRI. 12 Q. Okay. He kept you on the 13 medications. And you were still working 14 light duty; right? 15 A. Yeah, just door greeting. And 16 I'd take a buggy and go around with my 17 good hand and pick up things that was in 18 the wrong spot and push with one hand. I 19 wasn't using my arm. 20 Q. And then you had an MRI done on 21 the 19th? 22 A. At Oxford? 23 Q. In Oxford. You went back and</p>

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1 saw Dr. Shirah one more time? 2 A. Yeah. 3 Q. And you told him -- 4 A. That's when he said there's 5 nothing he could do. 6 Q. What did he say? 7 A. He said, "You've got to go to an 8 orthopedic surgeon. There's nothing I 9 can do for you. It's got to be -- have 10 surgery." 11 Q. Okay. Now, before we move on to 12 the next doctor, after you saw Dr. Shirah 13 on October the 4th -- well, strike that. 14 You got hurt on September the 15 28th, and you went to see Dr. Shirah on 16 October 4th? 17 A. Uh-huh, on Monday. 18 Q. So, during that time frame, did 19 you have any contact with anybody out at 20 CMI in Arkansas. 21 A. Huh-uh (negative). 22 Q. And you found out about going to 23 Dr. Shirah by Charlotte Woody at the	1 with your shoulder? 2 A. Every week. She'd ask me, you 3 know. And as soon as he looked at the 4 MRI, he got on the phone to 5 Ms. Charlotte -- to Ms. Victoria himself, 6 workman's comp -- Dr. Shirah did and told 7 her that I had to have surgery and needed 8 it immediately. 9 So, she was going to send me to 10 Gadsden. And I asked him could he call 11 and see if he could get somewhere closer. 12 So, she called him back. And they sent 13 me to Alex City, which is a little 14 closer. 15 Q. Who were they going to send you 16 to in Gadsden? 17 A. They never did say. They 18 just -- he asked them could they get me 19 somebody closer, so they sent me to Alex 20 City. 21 Q. All right. And you were talking 22 to Dr. Shirah about what orthopedic 23 doctor you were going to go to?
Page 58	Page 60
1 store? 2 A. Charlotte Woody, she set me -- 3 the appointment up with him. 4 Q. And did you talk to anybody else 5 at the store about doctors and 6 appointments other than Charlotte Woody? 7 A. Now, she's usually the one that 8 set up the appointments besides 9 Ms. Victoria. She'd call Victoria, and 10 Victoria would tell her who to send me to 11 or whatever. 12 Q. Okay. 13 A. I don't even -- I don't even 14 know what her last name is. Just 15 Victoria is all I know. She's with 16 workman's comp. 17 Q. And did you talk to her very 18 many times? 19 A. I talked to her several, several 20 times. 21 Q. Okay. We'll get into those. 22 How many times did you talk to Ms. Woody 23 about doctor's appointments and problems	1 A. Uh-huh (affirmative). 2 Q. That was yes? 3 A. Yeah. That was as soon as he 4 brought them in there and showed them to 5 me. He said I'll call Ms. Victoria and 6 get her to send you to another doctor -- 7 Q. Okay. 8 A. -- surgery. 9 Q. All right. So, who called you 10 and told you that you had an appointment 11 with Dr. Howorth? 12 A. Ms. Victoria when I got home 13 from Dr. Shirah's office, she called me 14 at home -- at my mother-in-law's. 15 Q. Okay. So, was that the first 16 time you ever talked to Ms. Victoria? 17 A. Yeah. She told me where to go 18 and who to go to. 19 Q. And that was on about October 20 the 22nd? 21 A. Uh-huh, I believe it was. It 22 was on a Wednesday because he said he was 23 full up on surgery the next day. He

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<p>1 wanted me in on surgery on Monday the 2 next following week. 3 Q. Say that again. 4 A. I said that he does surgeries on 5 Mondays and Thursdays, and this was 6 Wednesday. And he said he couldn't fit 7 me in on Thursday, but he wanted me in 8 surgery on Monday. And before I could 9 get back home, Victoria had done called 10 and cancelled it. 11 Q. Well, did Dr. Howorth tell you 12 that he wanted to do surgery before he 13 ever saw you? 14 A. Huh-uh (negative). After he 15 seen me -- 16 Q. Okay. I'm not there yet. 17 You're jumping ahead of me a little bit. 18 I'm sorry. I was confused. 19 A. Yeah. 20 Q. I'm talking about on October the 21 24th -- I mean, the 22nd when you went to 22 Dr. Shirah for the last time -- 23 A. Uh-huh.</p>	<p>1 on that next Monday. 2 Q. I understand. I understand. 3 But if you can, don't jump ahead of me 4 too much. I get confused kind of easy. 5 A. All right. I ain't used to 6 this. 7 Q. I understand. Like I say, I'm 8 not trying to trick you. I'm not here 9 trying to trick you. I just want to 10 learn a little bit more about your case. 11 A. Yeah. 12 Q. So, if you -- you know, don't 13 get frustrated. If you want to take a 14 break -- we've been going for, you know, 15 45 minutes. 16 A. I'm fine. 17 Q. Okay. So, Ms. Victoria called 18 you and told you to go and see 19 Dr. Howorth? 20 A. Howorth. 21 Q. Howorth. Okay. 22 A. Yeah. 23 Q. And I'll probably mispronounce</p>
Page 62	Page 64
<p>1 Q. -- and he looked at the MRI -- 2 A. Uh-huh. 3 Q. And looked at the results and 4 said, "Patient needs to be referred to an 5 orthopedist" -- 6 A. Uh-huh, that's true. 7 Q. All right. So, you left his 8 office on the 22nd? 9 A. Yeah. 10 Q. Then Ms. Victoria called you -- 11 A. At home. 12 Q. -- at home and said go see -- 13 A. Dr. Howorth in Alex City. 14 Q. In Alexander City? 15 A. Alexander City. 16 Q. All right. And said your 17 appointment is for -- 18 A. It was on a Wednesday. 19 Q. Okay. And was that October the 20 26th or 27th? 21 A. Somewhere around there. 22 Q. Okay. 23 A. Because he wanted me in surgery</p>	<p>1 it all day. And the first time you went 2 to see him was on October the 27th? 3 A. Yeah. I took the MRI with me. 4 Q. All right. And you took the MRI 5 film with you? 6 A. Yeah. 7 Q. And you got that from Open MRI, 8 from the people who actually do it? 9 A. And Dr. Shirah looked at it, and 10 he give it to me to take with me. 11 Q. So, you talked to Ms. Heppes, 12 Ms. Victoria -- 13 A. Uh-huh (affirmative). 14 Q. -- sometime around the 22nd? 15 A. Yeah, it was -- she set me up an 16 appointment for the Wednesday. But I -- 17 it was around the 22nd when I got through 18 with Dr. Shirah. That's the last time I 19 had to go see him because he said he 20 couldn't help me. 21 Q. Did anybody from out at CMI call 22 you on September the 30th? Do you 23 remember?</p>

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<p>1 A. I don't remember. I don't 2 remember nobody calling me. 3 Q. Okay. 4 A. Unless it was Charlotte to tell 5 me I had an appointment with Dr. Shirah. 6 Q. That's fine. I understand. 7 Now, before you went to 8 Dr. Howorth, you were still working light 9 duty? 10 A. Yeah. 11 Q. Okay. And they had paid you 12 some temporary total -- they had made a 13 payment to you for the days you were out 14 of work; is that right? 15 A. Oh, they give me, I think, it 16 was 200 and something dollars. And then 17 when I had surgery, they give me 60 18 bucks. 19 Q. But they paid you for the days, 20 though, that you were out of work; is 21 that right? 22 A. Yeah. 23 Q. Okay.</p>	<p>1 injury, that was paid by worker's comp; 2 right? 3 A. Yeah, they paid for that. 4 Q. All right. And they paid all 5 the bills for Dr. Shirah? 6 A. Yeah. 7 Q. And they paid for the MRI? 8 A. Yeah. 9 Q. Okay. 10 A. Well, they sent me some of the 11 bills, and I just took them to Wal-Mart. 12 Q. Okay. Well, I understand. But 13 they ultimately paid? 14 A. Yeah, they ultimately paid. 15 Q. You didn't have to pay any of 16 that out of your pocket? 17 A. Huh-uh, they took care of that. 18 Q. Okay. All right. 19 All right. So, the first time 20 you met with Dr. Howorth was on the 27th? 21 A. Uh-huh (affirmative). 22 Q. And you told him how the 23 accident had happened, right --</p>
Page 66	Page 68
<p>1 A. After I had to wait -- you know, 2 I think you had to wait a five-day grace 3 period before they start paying. 4 Q. Okay. And you were still 5 working the whole time even when you were 6 treating with -- seeing Dr. Howorth -- 7 A. Yeah. 8 Q. -- before the surgery? 9 A. Yeah. 10 Q. Okay. 11 A. I had to go up there with one 12 arm every night in pain. They didn't 13 want to pay me workman's comp. 14 Q. Well, the doctor is the one who 15 told you you could go back to work; 16 right? 17 A. He said, yeah, as long as I 18 didn't use that shoulder. 19 Q. And that was Dr. Shirah? 20 A. Yeah. 21 Q. Okay. And as far as you know, 22 the emergency room bill for the first 23 time you got hurt -- for the day of the</p>	<p>1 A. Uh-huh (affirmative). 2 Q. -- that you were cleaning up a 3 produce truck? 4 A. Uh-huh. 5 Q. And told him that you had been 6 treating with Dr. Shirah for a few days 7 and that that wasn't working? 8 A. Yes. 9 Q. He looked at the MRI and showed 10 that there was a tear in the shoulder. 11 And at that time, you told him that you 12 had not had any problems with your right 13 shoulder; correct? 14 A. No, I hadn't had any trouble. 15 Q. Now, on that first visit, he 16 wanted you to go to physical therapy even 17 before surgery, didn't he? 18 A. Ms. Victoria did. 19 Q. Well, Dr. Howorth didn't tell 20 you that he -- 21 A. He wanted me in surgery. This 22 was on Wednesday. He wanted me in 23 surgery the next following Monday.</p>

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	Page 69	Page 71
1	Q. Okay. All right.	1 Q. Okay. And where were you when
2	A. He said there ain't nothing you	2 that conversation occurred?
3	can do to it until it's fixed. She	3 A. I was on my phone with her then.
4	denied me. They wanted two more	4 Q. At your mother-in-law's?
5	doctors --	5 A. Uh-huh (affirmative).
6	Q. I understand. Well, let's not	6 Q. That was the 863-6195?
7	get to that yet. Okay. I understand.	7 A. 6195.
8	Please -- all right. So, if Dr.	8 Q. Okay.
9	Howorth's records say, "Preoperative	9 A. I called her every week. She
10	range of motion and strengthening to	10 kept saying she needed another doctor to
11	improve range of motion and become	11 look at it.
12	familiar with post-operative exercise	12 Q. All right. And you went back to
13	program," in other words, that he had	13 Dr. Howorth again on December the 8th;
14	referred you -- Dr. Howorth's records	14 right? Well, I'm sorry. Did you go back
15	indicate that he had referred you to	15 to see him again before the surgery?
16	physical therapy.	16 A. Huh-uh (negative). I had
17	A. After the surgery.	17 surgery on the 29th of November.
18	Q. You don't agree with that?	18 Q. Okay. You're right. You're
19	A. After the surgery.	19 absolutely right. But before -- between
20	Q. Okay. All right. And he told	20 October the 27th and the date of that
21	you that you needed surgery, and he	21 surgery, which was about a month --
22	wanted it done on that Monday?	22 A. About 63 days.
23	A. Uh-huh (affirmative).	23 Q. From the injury?
	Page 70	Page 72
1	Q. Is that yes?	1 A. Yeah. From the time I got hurt
2	A. Yes, he wanted it done --	2 until the surgery was 63 days.
3	Q. Okay. What else did he tell you	3 Q. Okay. But it was about a month
4	about the surgery?	4 from the first time you saw Dr. Howorth
5	A. He said it being so long -- he	5 until the surgery?
6	said he could already tell there was	6 A. Yeah, pretty close to it.
7	bursitis set up in it and it needed	7 Q. All right. Did you go to any
8	surgery immediately. And before I get	8 other doctors during that month?
9	back home, Victoria called and cancelled	9 A. Huh-uh (negative).
10	it.	10 Q. Is that no?
11	Q. Did he schedule the surgery?	11 A. No, I didn't go to no other
12	A. Yeah. He told me to go on to	12 doctors.
13	the hospital and get pre-oped and get	13 Q. Okay. And you talked to
14	ready to go on in.	14 Ms. Victoria you said every week?
15	Q. And did you go?	15 A. I called her every week and
16	A. No. That woman called me and	16 asked her would she hurry up and let me
17	told me to call them. And as soon as I	17 have surgery because I was in pain.
18	called, she denied it. She said, "We got	18 Q. Okay. Do you -- do you know who
19	two more doctors we want to look at them	19 your -- did you call her, or would she
20	MRI's before we let you do anything."	20 call you?
21	Q. Okay. And who was that,	21 A. Oh, I'd call her.
22	Ms. Victoria?	22 Q. Okay. Do you know who your
23	A. Ms. Victoria.	23 mother-in-law uses for her phone service?

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<p>1 A. My mother-in-law? She's got 2 Roanoke Telephone.</p> <p>3 MR. TINNEY: Roanoke Telephone 4 is the only telephone service we have 5 here.</p> <p>6 THE WITNESS: Uh-huh. If she 7 couldn't get in touch with me, she'd 8 leave a message with my mother-in-law, 9 and my mother-in-law would come tell me, 10 and then I'd go call her.</p> <p>11 Q. (By Mr. Brown) But you contend 12 that you talked to her and she said that 13 she wouldn't let you have surgery until 14 two other doctors looked at it?</p> <p>15 A. Yeah. She said we want -- and 16 she said you need to get Howorth to send 17 me everything he's got, MRI's and 18 everything. We need two more doctors to 19 look at it.</p> <p>20 Q. And did she say that she wanted 21 to send you to a different doctor, or 22 did --</p> <p>23 A. No. She just said she wanted</p>	<p>1 told me he'd take care of it and send her 2 what she had to have. And every time I'd 3 call her and ask her did she get what he 4 sent, she said, "No, he didn't send her 5 everything she needed." And I'd call him 6 back and ask him to please send her 7 whatever she needs. Call her and find 8 out what she needs and please send it to 9 her so I could get the surgery done.</p> <p>10 Q. Okay. And what would his office 11 tell you?</p> <p>12 A. He said, "We sent her everything 13 we've got."</p> <p>14 Q. Okay.</p> <p>15 A. She kept claiming they didn't. 16 Then she claimed one doctor looked at it, 17 but she hadn't had another doctor to look 18 at it. She wanted another doctor to look 19 at it. And it took 63 days before she 20 ever okayed it.</p> <p>21 Q. Okay. Well, actually, it was 22 like 30 days because it's not 63 days. 23 It's 63 days from the day you injured it?</p>
Page 74	Page 76
<p>1 two more doctors to look at them.</p> <p>2 Q. Did she tell you where those 3 doctor were going to be?</p> <p>4 A. She didn't tell me where they 5 was at. She just said that I needed to 6 get in touch with Howorth and get him to 7 send her everything that he had on me so 8 she could get two more opinions.</p> <p>9 Q. Okay. And did you talk to 10 Dr. Howorth and tell them to send 11 everything?</p> <p>12 A. Yeah. And they kept claiming he 13 wasn't sending them the right stuff. So, 14 I had to call him back. Then I'd call 15 her back. They finally send -- you know, 16 finally sent her what she wanted because 17 she finally okayed it on the 29th.</p> <p>18 Q. Okay. How many times did you 19 call -- did you ever go back to 20 Dr. Howorth's office and ask him, "Will 21 you please give me the records so I can 22 send them"?</p> <p>23 A. No, I didn't. I just -- he just</p>	<p>1 A. From the time I got hurt, yeah. 2 Q. But about 31 days from the time 3 Dr. Howorth said, "I want to operate on 4 your shoulder"?</p> <p>5 A. Yeah, uh-huh.</p> <p>6 Q. Right?</p> <p>7 A. Yeah.</p> <p>8 Q. Okay. Okay. Do you know how 9 many times Ms. Heppes had to call 10 Dr. Howorth to ask them to please send 11 the appropriate --</p> <p>12 A. I don't really know how many 13 times she called. I called every week, 14 and she said they hadn't never sent her 15 what she needed.</p> <p>16 Q. Okay. And after she would tell 17 you that, you would call Dr. Howorth?</p> <p>18 A. Yeah.</p> <p>19 Q. And Dr. Howorth would say, 20 "Well, we already sent everything"?</p> <p>21 A. "We've sent everything we've 22 got."</p> <p>23 Q. And then you would do what, call</p>

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Page 77	Page 79
1     her back.	1     A. She said, "You're true on that
2     A. Call her back. And she'd say	2     too I guess." I said, "I'm not going to
3     they still ain't got everything. I don't	3     let them hurt my shoulder worser until
4     know why she kept doing it.	4     they fix it." She said, "I understand."
5     Q. Okay. All right.	5     Q. Okay. So, you talked to her on
6     A. All I know, I wasn't sleeping in	6     the 27th and then the following week. I
7     the daytime, and I was up there working	7     don't remember what the date of that week
8     all night long in pain for a long time.	8     was. But the following week, you talked
9     Q. And you didn't have the	9     to her, and you had talked back and forth
10    opportunity to go and physically get	10    with her and Dr. Howorth; right?
11    records from Dr. Howorth and mail them	11    A. Uh-huh (affirmative).
12    yourself; right?	12    Q. Okay.
13    A. Huh-uh (negative).	13    A. He was wanting to do it, and she
14    Q. Is that no?	14    was prolonging it.
15    A. No. Because his secretary told	15    Q. Why do you think she was
16    me -- said that she would try to send	16    prolonging it?
17    them everything she could.	17    A. I don't know. I couldn't figure
18    Q. Do you remember his secretary's	18    it out.
19    name?	19    Q. Do you think that she was
20    A. Oh, no.	20    intentionally trying to hurt you?
21    Q. Was it Amy?	21    A. I told her I was in excruciating
22    A. Yeah, I think it was Amy.	22    pain. I said, "Look. I've been this way
23    Q. Now, did you ever call	23    for nearly 63 days." I said, "I need
Page 78	Page 80
1     Ms. Howorth -- not Ms. Howorth --	1     surgery." I said, "This is killing me."
2     Ms. Heppes on November the 8th, 2004, and	2     She said, "I understand. But we ain't
3     tell her that you did not want to do any	3     got the right paperwork."
4     physical therapy until after surgery?	4     Q. But do you think that she was
5     A. Yes, I did. I told her that	5     intending to cause you any harm? You
6     Dr. Howorth said you can't rehabilitate	6     don't think she was doing that, do you?
7     something that ain't been fixed. And she	7     A. I tried to explain it to her. I
8     said, "We thought you could rehabilitate	8     said, "It's killing me. I don't sleep in
9     it first." I said, "You can't if it	9     the daytime, and I have to come up here
10    ain't been fixed."	10    at night because y'all don't want to pay
11    Q. Okay. So, how did you find out	11    me workman's comp." And I said, "I'm in
12    that you were being told to go to	12    excruciating pain."
13    physical therapy before the surgery?	13    Q. But you don't think that she was
14    A. She called -- she called my	14    doing anything intentionally, do you?
15    mother-in-law before I could even get	15    MR. TINNEY: I'm going to object
16    back home. He done had me scheduled for	16    and really instruct him not to answer
17    surgery, and she called and cancelled it	17    that because you're asking for a mental
18    and wanted me to do therapy. And I	18    operation on the part of Victoria, and he
19    called her back and told her there's no	19    would have no way to know what she was
20    way I can therapy something that's tore	20    intending and not intending. That's the
21    up. She said, "Well, you're true about	21    mental operation on her part.
22    that too."	22    Q. (By Mr. Brown) Based on the
23    Q. I didn't hear that part.	23    conversations, did you formulate any of

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<p style="text-align: right;">Page 81</p> <p>1 your own opinions on what she meant or 2 what she intended? 3 A. I didn't know what she intended 4 to do. 5 Q. Okay. 6 MR. BROWN: Let's certify that 7 first question, please. 8 THE WITNESS: I was just begging 9 and pleading. 10 MR. TINNEY: You answered the 11 question, Steve. 12 Q. (By Mr. Brown) That's fine. 13 Are you critical of the 14 treatment that Dr. Shirah did for you? 15 A. No. He was just treating me for 16 what he thought it was. 17 Q. Okay. And you thought that it 18 was okay to go to Dr. Shirah before -- 19 A. That's who they told me to go 20 to, so I didn't, you know, have no 21 choice. 22 Q. Okay. Okay. All right. Now, 23 the next week was November the 1st</p>	<p style="text-align: right;">Page 83</p> <p>1 specific number of times that y'all 2 talked? 3 A. No, but it was several. 4 Q. Okay. Do you think it was more 5 or less than five? 6 A. Oh, it was more. 7 Q. Okay. Do you think it was more 8 or less than ten? 9 A. I imagine it was more. 10 Q. More than ten? 11 A. Yeah. 12 Q. Okay. 13 A. Because every week, I'd call her 14 and ask her when could they do it, when 15 can I get my surgery. 16 Q. And she was telling you as soon 17 as Dr. Howorth send us the stuff, and 18 then you were calling the doctor, and the 19 doctor said I sent it. And it seems like 20 there was just a lot of confusion? 21 A. A lot of confusion, and I was 22 the one suffering in pain. 23 Q. Okay. Something going on</p>
<p style="text-align: right;">Page 82</p> <p>1 through November the 5th. Those were the 2 business days. I was looking at a 3 calendar, so if you would trust me on 4 that. Did you talk to her between 5 November 1st and November 5th, 6 Ms. Victoria? 7 A. I can't remember whether I did 8 or not. 9 Q. Okay. 10 A. I talked to her lots. 11 Q. Okay. How about during the week 12 of November the 8th through November 13 12th, do you recall any conversations 14 with her? 15 A. I might have. I'm not sure. I 16 couldn't guarantee it. 17 Q. Okay. But you don't recall. 18 When you're describing to me your 19 conversations, you don't recall the 20 specific days? 21 A. No, I can't remember the 22 specific days. 23 Q. And you don't recall the</p>	<p style="text-align: right;">Page 84</p> <p>1 between the doctor's office and CMI? 2 A. Yeah. 3 Q. And that was the reason you 4 weren't getting your surgery? 5 A. That's right. 6 Q. Okay. And CMI was saying, "he 7 hasn't done what we asked him to do," and 8 he was saying, "I have done what they 9 asked me to do," and all that kind of 10 stuff; right? 11 A. Yeah. 12 Q. Do you know if Ms. Heppes had 13 any communication with Dr. Shirah or how 14 many times -- not Shirah -- Dr. Howorth's 15 office? 16 A. I'm pretty sure she called them 17 because she said she called them to make 18 sure she got what she needed sent to her. 19 Q. And do you have any kind of 20 evidence or know the specific number of 21 times or the days that those phone calls 22 occurred? 23 A. I couldn't tell you that.</p>

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<p style="text-align: right;">Page 85</p> <p>1 Q. All right. And during all this 2 time, I think you said you were at home 3 during the day and couldn't sleep? 4 A. I couldn't sleep because I was 5 hurting. 6 Q. And you were still going to work 7 at night? 8 A. They was making me come up there 9 every night. I couldn't take my pain 10 medicine because it would make me so 11 sleepy and drowsy, so I was just stuck. 12 Q. Okay. Did you have 13 conversations with anybody other than 14 Ms. Heppes out at CMI about that surgery? 15 A. She was the only one. 16 Ms. Victoria took care of all that. 17 Q. And after Dr. Howorth told you 18 that he wanted to do surgery, and she was 19 telling you that they were waiting for, 20 you know, information and all that, did 21 you have any conversations with anybody 22 at the store about what was going on? 23 A. Yeah. I talked to Rhonda and</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. Okay. Anybody else at the store 2 other than Ms. Rhonda? 3 A. As far as I know, nobody else 4 did. 5 Q. Do you remember talking to 6 Charlotte Woody about it? 7 A. Charlotte might have called her 8 some. 9 Q. But you don't know? 10 A. I don't know. 11 Q. How about Mr. Cheatwood? 12 A. Chris Cheatwood. 13 Q. Do you know if he ever called 14 for you? 15 A. No. He wasn't there very long. 16 He transferred. 17 Q. Okay. So, at the store, the 18 only people you would have had 19 communications with were Rhonda Walker 20 and Charlotte Woody? 21 A. Charlotte Woody. 22 Q. All right. And they were always 23 fine to you, weren't they?</p>
<p style="text-align: right;">Page 86</p> <p>1 some of the management and everything and 2 told them how I was displeased with it 3 because they wouldn't, you know, give me 4 my surgery. 5 Q. Okay. And what did they tell 6 you? 7 A. They said that it was out of 8 their hands, that workman's comp had to 9 take care of it. 10 Q. Okay. Rhonda, was that Rhonda 11 Walker? 12 A. Rhonda Walker. She even 13 called -- she even called her one time. 14 Q. She called CMI? 15 A. Called Victoria one time. 16 Q. Were you there when she called 17 them? 18 A. No. She told me she'd call her 19 to find out what the problem was. 20 Q. Did she ever tell you what the 21 problem was or what she had found out? 22 A. She just said they didn't have 23 the right paperwork.</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Yeah. 2 Q. Okay. And Ms. Heppes -- you 3 know, you talk about conversations with 4 her. Was she ever mean to you or rude? 5 A. She got kind of rude on the 6 phone a couple of times. 7 Q. Okay. Did she ever tell you 8 things like, you know, leave me alone or 9 stuff like that? 10 A. No. She just said we're trying 11 to do it as fast as we can. I said, "But 12 you're killing me in same process." 13 Q. Okay. So, was -- did you think 14 that maybe she was just frustrated that 15 she -- 16 A. I don't know. 17 Q. Okay. That's fine. 18 A. I don't know. 19 Q. And the only person that you can 20 remember talking to at Dr. Howorth's 21 office was Amy? 22 A. Secretary. 23 Q. You think it was Amy?</p>

22 (Pages 85 to 88)

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<p style="text-align: right;">Page 89</p> <p>1 A. Yeah, I think her name was Amy.    2 Q. Did they say anything about what    3 was taking CMI so long? Did they tell    4 you anything?    5 A. They couldn't tell me. They    6 said they didn't know why they was    7 holding up. They said, "Dr. Howorth    8 wants you in surgery, and we don't know    9 what the hold up is on it."    10 Q. Okay. And how many times did    11 Ms. Heppes tell you that she wanted to    12 have another opinion?    13 A. I called her about at least once    14 a week, and she said that she needed two    15 more doctors to look at it. I said, "You    16 done got Dr. Shirah and Dr. Howorth." I    17 said, "Who else do you need?" You know,    18 she said they had two more company    19 doctors that they wanted to look at it.    20 Q. Did she tell you who the company    21 doctors was?    22 A. She didn't tell me who no doctor    23 was.</p>	<p style="text-align: right;">Page 91</p> <p>1 kind of a request or an authorization    2 from the doctor before they could    3 schedule the surgery?    4 A. I don't know. I don't really    5 know what the problem was. She just kept    6 saying they didn't have the right    7 paperwork and they needed the MRI.    8 Q. And you assumed that Dr. Howorth    9 sent the paperwork?    10 A. Yeah. He told me. I called his    11 office. He said, "We sent them    12 everything we've got."    13 Q. Now, when did you find out --    14 what day was it that you found out that    15 the surgery had actually been approved?    16 A. They called me on a -- I think    17 it was Wednesday and told me they wanted    18 me in there on that Monday, I think.    19 Q. And on the day they called you,    20 they called you at home; right?    21 A. Uh-huh (affirmative).    22 Q. And was that Ms. Victoria?    23 A. Victoria, she had already</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. And she didn't tell you if she    2 wanted you to go be seen by somebody    3 else?    4 A. Nobody besides Howorth.    5 Q. So, do you know whether she just    6 wanted to have the records reviewed by    7 somebody?    8 A. She just kept saying she didn't    9 have the proper paperwork.    10 Q. Okay.    11 A. Kept putting it off.    12 Q. Do you know when Dr. Howorth    13 finally -- strike that.    14 Do you know when Dr. Howorth    15 actually sent the surgery requests to    16 CMI?    17 A. I don't know exactly when he    18 sent it. It had to be from the first    19 time I seen him until within 30 -- it was    20 about 30 days after that before I had    21 surgery.    22 Q. Okay. And was it your    23 understanding that they had to have some</p>	<p style="text-align: right;">Page 92</p> <p>1 approved it. She finally approved it.    2 Q. And did she tell you that they    3 had finally gotten the paperwork from the    4 doctor?    5 A. Finally.    6 Q. Okay. And so they approved it?    7 A. Then I had to go down on Friday    8 and get preadmitted and then go back    9 Monday for surgery.    10 Q. All right. And that was at    11 Russell Hospital?    12 A. Russell Hospital.    13 Q. Okay.    14 A. Alex City.    15 Q. So, you recall that she called    16 you one day, you went to the hospital the    17 next day to get preregistered or fill out    18 some paperwork?    19 A. Yeah. Because they called me    20 and told me to get all my --    21 preregistered and everything on Friday    22 and be ready to have surgery on Monday.    23 Q. And then you had the surgery on</p>

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Page 93	Page 95
1    Monday?	1    needed to be preadmitted on that Friday
2    A. On the 29th.	2    and he wanted surgery on that Monday
3    Q. So, if the records from Russell	3    morning. Then I think -- I think that's
4    Hospital show that you went in there on	4    the way it happened. So, I had to make
5    the 26th, you don't have any reason to	5    two trips down there Friday and then go
6    doubt that, do you?	6    back and be admitted on Monday.
7    A. No. I just went down there and	7    Q. How long does it take to get
8    got preadmitted on a Friday. And then	8    from your house to Alexander City?
9    there was Saturday and Sunday in between,	9    A. It's about -- I had to keep up
10   and then I had surgery on Monday.	10   with my mileage. It was 46 miles down
11   Q. Is that your signature there?	11   there and 46 miles back.
12   A. Yes, it looks like my signature.	12   Q. Now, the surgery was paid for by
13   Q. Okay. This is just a	13   comp?
14   preadmission sheet from Russell Hospital.	14   A. Yeah.
15   And was the surgery inpatient?	15   Q. You never got a bill?
16   Did you have to spend the night in the	16   A. Oh, yeah, I got several bills.
17   hospital?	17   Q. But you sent it --
18   A. Oh, they had me out of there	18   A. I took it to Wal-Mart, and they
19   that evening.	19   took care of it. They sent them to me,
20   Q. Okay.	20   though. But I took it to Wal-Mart, and
21   A. I was still -- I was still under	21   they eventually paid it.
22   the influence of stuff. I didn't even	22   Q. Nobody ever brought suit?
23   know where I was at. My son had to tote	23   A. They sent me one for the
Page 94	Page 96
1    me to the car. They wanted me out of	1    anesthesiologist. I had to call them
2    there as quick as possible.	2    about that. And I had to call
3    Q. Did they get you in real early?	3    Ms. Victoria, and she said she'd take
4    A. Yeah. I was in there, I think,	4    care of it. It took them a while before
5    around 9:00 or 10:00. They had me out of	5    they paid that. They sent me another
6    there by 3:00 o'clock. I don't even	6    bill.
7    remember leaving there. I had to stop	7    Q. But it -- you didn't get sued by
8    and throw up on the side of the road.	8    anybody?
9    Q. That stuff was making you --	9    A. No. Eventually, they paid them.
10   A. Yeah. The anesthesiologist even	10   Q. Okay. Now, you talked to
11   had to walk --	11   Ms. Victoria on the day after your
12   Q. -- making you nauseated?	12   surgery; right? Do you remember that?
13   A. Yeah. My son had to tote me to	13   A. I can't remember if I did or
14   the car. They didn't want me in there no	14   not. It would have had to have been on
15   longer than what they had to.	15   the 30th of the month. Well, I got
16   Q. Okay. And did Ms. Heppes --	16   surgery on the 29th. It was on a Monday.
17   Ms. Victoria, did she call you at home	17   I might have did. I'm not for sure it's
18   and tell you that the surgery was being	18   been so long.
19   scheduled?	19   Q. Okay. But you told them that
20   A. I can't even remember if she	20   you had had the surgery?
21   called me or Dr. Howorth called me. One	21   A. Yeah.
22   of -- I can't remember which one called	22   Q. Do you remember a phone call,
23   me. I think Amy called me and told me I	23   though, where somebody called and said,

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<p style="text-align: right;">Page 97</p> <p>1 "Okay. You were scheduled for surgery.    2 Did you actually get it done"?    3 A. Yeah.    4 Q. Okay.    5 A. And the next question was, "When    6 are you starting therapy?" I said, "the    7 next week."    8 Q. Okay. And the doctor wanted you    9 to stay out of work for about two months?    10 A. I was out a week.    11 Q. A week?    12 A. Yeah. I was out a week, and    13 they made me go back.    14 Q. Who is "they"?    15 A. The doctor told me I could go    16 back just as long as I kept my arm in a    17 sling and didn't use it.    18 Q. Okay. And that was --    19 A. Howorth.    20 Q. And that was on December the 8th    21 when you went back to Dr. Howorth; right?    22 A. Uh-huh (affirmative).    23 Q. Okay. Now, before you went to</p>	<p style="text-align: right;">Page 99</p> <p>1 Q. But how did you know to go to    2 the -- is it Lake Martin Physical    3 Therapy?    4 A. He's in the same building with    5 Dr. Howorth right across the hall.    6 Q. Okay. And that's --    7 A. Dr. Mark Staples, I think.    8 Q. All right. And on the date of    9 your first visit to physical therapy, you    10 said the pain was a five on a scale of    11 one to ten; is that right?    12 A. Oh, it was hurting.    13 Q. And you went back to Dr. Howorth    14 on December the 8th, and that's when he    15 told you that you could go back to work    16 on light duty?    17 A. Yeah.    18 Q. Going back to being a --    19 A. So, I was staying up all night    20 and going to Alex City twice a week doing    21 physical therapy.    22 Q. Okay. Did you ask the doctor to    23 keep you out of work longer?</p>
<p style="text-align: right;">Page 98</p> <p>1 Dr. Howorth, you actually went to your    2 first physical therapy appointment on    3 like the day after or two days after the    4 surgery, didn't you?    5 A. Yeah. I had surgery on Monday,    6 and I started therapy, I think, on    7 Wednesday. I went Wednesday and Friday.    8 Q. All right.    9 A. They wanted me to start therapy    10 just as quick as possible.    11 Q. Okay. And were you wearing one    12 of those funny slings too?    13 A. Yeah.    14 Q. Did anybody -- did Ms. Victoria    15 ever call you and tell you to go to    16 physical therapy? How did you find out    17 you needed to go to physical therapy?    18 A. Dr. Howorth told me after I had    19 surgery that he wanted me to start    20 therapy the next following Wednesday, I    21 think. I had surgery on Monday. He    22 wanted me in physical therapy by    23 Wednesday, two days later.</p>	<p style="text-align: right;">Page 100</p> <p>1 A. No. He just told me to go back    2 just as long as I didn't use that one    3 arm. Just as long as I don't hurt that    4 arm whatsoever.    5 Q. All right. All right. After    6 that visit on December the 8th, you were    7 still going to physical therapy?    8 A. Yeah. I would try to -- if I    9 had to see him, I would try to schedule    10 it while I was already down there.    11 Q. Okay. And he wanted you to    12 continue with your physical therapy?    13 A. Yeah. I done it for two and a    14 half months.    15 Q. And you went to physical therapy    16 on the 8th, and then you went on the 9th;    17 isn't that right? Again, did you go two    18 days back to back? Do you remember?    19 A. Seems like I did when I first    20 started. And then I scheduled it for,    21 you know, to skip a day in between    22 because I had to work every night. I    23 couldn't go every day. So, I had to do</p>

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<p>1 it on Wednesday and maybe go again on 2 Friday.</p> <p>3 Q. All right. Then on December -- 4 I'm sorry. I think it was December the 5 10th that says you went back the second 6 or the third time to physical therapy. 7 Does that sound about right?</p> <p>8 A. I went the whole month of 9 December and January and half of 10 February.</p> <p>11 Q. And was physical therapy helping 12 you at all?</p> <p>13 A. Oh, man, it was hurting me. It 14 was killing me.</p> <p>15 Q. But was it helping you with pain 16 at home?</p> <p>17 A. When I'd leave out from down 18 there, I'd be hurting so bad, I couldn't 19 even sleep. I told Dr. Howorth it was 20 hurting me worse than it was helping me. 21 So, he finally stopped it after two and a 22 half months.</p> <p>23 Q. And would the pain get any</p>	<p>1 exactly what day it was.</p> <p>2 Q. And the time that you were off, 3 that's when you got that second check for 4 \$60 or whatever it was?</p> <p>5 A. Yeah. That's when I had the 6 surgery. They sent me a check for \$60. 7 I laughed.</p> <p>8 Q. Went back to Dr. Howorth again 9 on December the 29th. Does that sound 10 right?</p> <p>11 A. I went to how many times, I 12 don't know exactly how many times I did 13 go. I went to him at least once a week 14 or once every two weeks in between 15 therapy.</p> <p>16 Q. But if you visited with him on 17 the --</p> <p>18 A. I can't remember exact dates.</p> <p>19 Q. Well, if you visited with him on 20 the 8th, and he says come back in three 21 weeks for an assessment, you would make 22 your appointment before you left the 23 office; right?</p>
<p>1 better?</p> <p>2 A. Because they x-rayed it. He 3 said one of my screws had moved and was 4 scrubbing my shoulder bone.</p> <p>5 Q. And did he tell you why one of 6 the screws had moved?</p> <p>7 A. He said the only thing he could 8 do is he might have to go back in and 9 rescope it or give me Cortisone. That 10 was all he could do.</p> <p>11 Q. Okay. You hadn't had another 12 surgery, have you?</p> <p>13 A. Huh-uh, not besides the leg and 14 the heart.</p> <p>15 Q. I understand. But nothing else 16 on your shoulder?</p> <p>17 A. Huh-uh (negative).</p> <p>18 Q. Do you remember the first day 19 you went back to work? Was it like 20 December the 12th?</p> <p>21 A. I can't remember exactly. I had 22 surgery on the 29th, and he told me to 23 take off a week. I can't remember</p>	<p>1 A. Yeah.</p> <p>2 Q. So, you'd leave the office with 3 a little appointment card?</p> <p>4 A. Yeah.</p> <p>5 Q. Okay. So, then, if you went 6 back on December the 29th, that said 7 "follow up for your rotator cuff, wounds 8 are clean." Continue -- he put you on 9 Celebrex at that time for --</p> <p>10 A. Yeah.</p> <p>11 Q. -- discomfort?</p> <p>12 A. Uh-huh (affirmative).</p> <p>13 Q. Kept on going to physical 14 therapy?</p> <p>15 A. Kept on going to physical 16 therapy.</p> <p>17 Q. If he told you to come back in 18 three weeks, would you have made your 19 appointment before you left the office?</p> <p>20 A. Yeah, I always did.</p> <p>21 Q. Between the two visits on the 22 8th and the 29th during that 21-day 23 period, do you remember if you had any</p>

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<p>1 conversations with Ms. Victoria?</p> <p>2 A. After I got surgery, I didn't</p> <p>3 hardly ever call her back anymore. Until</p> <p>4 I got surgery, I was calling her every</p> <p>5 week, begging her to get me surgery.</p> <p>6 Q. But then after the surgery, you</p> <p>7 were going to therapy, and you were going</p> <p>8 to the doctor?</p> <p>9 A. Yeah, I was going to the doctor</p> <p>10 and therapy twice a week.</p> <p>11 Q. Okay. And then going to work</p> <p>12 every night?</p> <p>13 A. Going to work every night.</p> <p>14 Q. And do you know how many more</p> <p>15 conversations you had with her after</p> <p>16 that?</p> <p>17 A. It wasn't many.</p> <p>18 Q. Okay. And did you have any</p> <p>19 conversations with her after the surgery</p> <p>20 that were not good conversations? Did</p> <p>21 y'all --</p> <p>22 A. We had one. I was in the office</p> <p>23 at Wal-Mart. And we had one because I</p>	<p>1 medicine. I done got in bad shape.</p> <p>2 Q. So, did you go see Dr. Caypless?</p> <p>3 That's at Woodland; is that right?</p> <p>4 A. Woodland, uh-huh.</p> <p>5 Q. Did you go to him and get on</p> <p>6 that medication before you had the</p> <p>7 shoulder surgery?</p> <p>8 A. No. I wasn't on any kind of</p> <p>9 medication until I had surgery. After I</p> <p>10 had surgery, that's when I had to start</p> <p>11 medication.</p> <p>12 Q. Okay. But you had the</p> <p>13 conversation where your blood pressure</p> <p>14 shot up high before the surgery?</p> <p>15 A. Yeah. When I was getting</p> <p>16 preadmitting, that woman -- she done a</p> <p>17 heart thing on me down there because she</p> <p>18 was worried I was going to have a stroke</p> <p>19 because it was running 150 over 100. She</p> <p>20 didn't even want me to leave the hospital</p> <p>21 that day. She said, "You need to get in</p> <p>22 here Monday and get this done."</p> <p>23 Q. That was at Russell Hospital?</p>
<p>Page 106</p> <p>1 told her how bad I was in pain. I said,</p> <p>2 "Y'all are killing me."</p> <p>3 Q. That's after the surgery?</p> <p>4 A. That's before the surgery.</p> <p>5 Q. Okay. I was talking -- I'm</p> <p>6 sorry.</p> <p>7 A. We didn't have any trouble after</p> <p>8 I got the surgery, you know.</p> <p>9 Q. You didn't have any problems</p> <p>10 with her after the surgery?</p> <p>11 A. Huh-uh (negative).</p> <p>12 Q. When you had the conversation</p> <p>13 with her at the store, was there anybody</p> <p>14 else in the room?</p> <p>15 A. Rhonda Walker was sitting in</p> <p>16 there because she thought I was fixing to</p> <p>17 pass out my blood pressure had done shot</p> <p>18 up so high.</p> <p>19 Q. Did you go to the doctor?</p> <p>20 A. Yeah. That's when -- I had done</p> <p>21 made my appointment with Dr. Bill</p> <p>22 Caypless. That's the reason they had to</p> <p>23 put me on blood pressure and cholesterol</p>	<p>Page 108</p> <p>1 A. Uh-huh (affirmative). She</p> <p>2 didn't even want to let me go home. She</p> <p>3 was scared I was going to have a stroke.</p> <p>4 Q. Did you tell her you were okay?</p> <p>5 A. She made me lay down and done</p> <p>6 some kind of test on me. She said, "You</p> <p>7 need to get to your regular doctor and</p> <p>8 get you some blood pressure medicine</p> <p>9 now."</p> <p>10 Q. And you didn't get on blood</p> <p>11 pressure medicine until after the</p> <p>12 surgery?</p> <p>13 A. After the surgery, I had to go</p> <p>14 on blood pressure and cholesterol</p> <p>15 medicine too. Both of them was out of</p> <p>16 sight.</p> <p>17 Q. Did they tell you what your</p> <p>18 cholesterol was?</p> <p>19 A. He told me, but I couldn't tell</p> <p>20 you. Bill Caypless could tell you.</p> <p>21 Q. But that's just from heredity</p> <p>22 and --</p> <p>23 A. Yeah.</p>

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<p style="text-align: center;">Page 109</p> <p>1 Q. -- maybe eating too much fried 2 food?</p> <p>3 A. He just told me that me being in 4 pain for so long is the reason it went up 5 like that. He said, "You're probably 6 going to have it the rest of your life."</p> <p>7 Q. Okay. So, Dr. Caypless told 8 you --</p> <p>9 A. Told me that --</p> <p>10 Q. -- that pain made your --</p> <p>11 A. -- pain can make your blood 12 pressure shoot up.</p> <p>13 Q. I understand blood pressure. I 14 was asking did he say that the pain made 15 your cholesterol go up?</p> <p>16 A. That's what he said. He said 17 between all the pain I went through, my 18 cholesterol was out of sight, and my 19 blood pressure was out of sight too. I 20 check it pretty regular. It runs high 21 every day.</p> <p>22 Q. Has the doctor told you that you 23 need to quit smoking?</p>	<p style="text-align: center;">Page 111</p> <p>1 you remember any conversations with 2 anybody at CMI, Ms. Victoria or anything 3 like that?</p> <p>4 A. Not offhand.</p> <p>5 Q. Okay. Do you remember if you 6 had talked to anybody at the store about 7 your shoulder?</p> <p>8 A. No. Everybody just asked me how 9 I was doing.</p> <p>10 Q. Okay. But that was just saying 11 "Are you feeling better"?</p> <p>12 A. Yeah. Just asked me how I was 13 doing basically.</p> <p>14 Q. And when you saw Dr. Howorth on 15 the 19th, he said that he felt like your 16 range of motion at that time was pretty 17 good and that you had 80 percent range of 18 motion. Did y'all discuss that?</p> <p>19 A. I don't remember that.</p> <p>20 Q. Okay.</p> <p>21 A. He just told me that if he could 22 have laser it back, it would have been 23 better. Since he couldn't laser it and</p>
<p style="text-align: center;">Page 110</p> <p>1 A. Oh. They're all going to tell 2 you that.</p> <p>3 Q. Bear with me a minute, please. 4 When you went the day to take -- 5 to get your surgery done on the 29th, did 6 they give you anything for your blood 7 pressure?</p> <p>8 A. Huh-uh (negative). It was high 9 that day too.</p> <p>10 Q. All right. We had last talked 11 about your December 29th visit with 12 Dr. Howorth; right?</p> <p>13 A. Uh-huh (affirmative).</p> <p>14 Q. Okay. And after that visit, 15 your next visit was about three weeks or 16 January 19th up there at the top. You 17 don't disagree with that?</p> <p>18 A. I can't remember.</p> <p>19 Q. Up there at the top.</p> <p>20 A. I went to him the whole month of 21 December and January and February 22 before --</p> <p>23 Q. Well, between the two visits, do</p>	<p style="text-align: center;">Page 112</p> <p>1 had to put pins in it, he said, it 2 wouldn't never be right.</p> <p>3 Q. Why couldn't he laser it back?</p> <p>4 A. Because it was tore so -- it 5 done sagged -- it had pulled and 6 stretched so far from taking so long 7 about getting it done, that he had to 8 pull them up and put pins in them besides 9 lasering it.</p> <p>10 Q. And when did he tell you that?</p> <p>11 A. The day when I come out of 12 surgery, he said, "I had to put pins in 13 them. I couldn't do, you know, the laser 14 because it was stretched too bad."</p> <p>15 Q. And he said it was stretched too 16 bad --</p> <p>17 A. Yeah.</p> <p>18 Q. -- because you had waited so 19 long to have the surgery?</p> <p>20 A. Because I had waited so long to 21 get surgery.</p> <p>22 Q. Okay. We're talking over each 23 other.</p>

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1 A. Yeah. 2 Q. Let me finish my question, and 3 I'll let you finish your answer. 4 And that was the day you were at 5 the hospital before you left to come 6 home? 7 A. Yeah. 8 Q. And did he tell you that your 9 outcome would have been better -- 10 A. Oh, yes. 11 Q. -- if you had had surgery -- 12 A. Earlier. 13 Q. Okay. When did he tell that you 14 should have had surgery by? 15 A. He wanted me to do it on 16 November the 1st. That was on that 17 Wednesday when I seen him. He wanted me 18 in there on that Monday, and they denied 19 it. 20 Q. Did he tell you -- 21 A. 28 more days. 22 Q. Did he tell you that if you had 23 had surgery on the 1st, that he would	1 Q. And is that the only time he 2 told you -- 3 A. And then when I start back going 4 to him, they'd x-ray every time to see if 5 the screws and everything -- but one of 6 them had moved, and it was scraping my 7 bone. 8 Q. And he told you that this screw 9 had moved because -- 10 A. Yeah, one of them had moved. 11 Q. He told you that it had moved 12 because of physical therapy? 13 A. I guess. That's the only thing 14 I could figure out that made it move. 15 Q. But he didn't tell you what made 16 it move? 17 A. No. He just said one of them 18 had -- he x-rayed it. And he just said 19 one of them looked like it had shifted 20 and was scraping my bone in there. He 21 said, "All I can do is give you 22 Cortisone." 23 Q. Okay. After you saw Dr. Howorth
Page 114	Page 116
1 have been able to fix it with a laser? 2 A. Yeah. 3 Q. Between November the 1st and the 4 day you had the surgery, did you do 5 anything with your shoulder other than 6 keep it in a sling? 7 A. Kept it in a sling, that's it. 8 Q. Did you try to move it at all? 9 A. I couldn't it was hurting so 10 bad. 11 Q. You use it at work? 12 A. Huh-uh (negative). 13 Q. So, you walked around in a 14 sling? 15 A. In a sling, just using one hand. 16 Q. How many times did he tell you 17 that the surgical outcome would have been 18 better if you would have had the surgery 19 earlier? Did he ever tell you that -- 20 A. That day when I left the 21 hospital. He said if he'd done it 22 earlier, he could have fixed it a lot 23 easier.	1 on the 19th -- and his note indicated 2 that you were doing okay with physical 3 therapy. Did you feel like the physical 4 therapy was doing you -- 5 A. I kept telling him it was 6 hurting me every time I was doing it. 7 Q. Did you think it was improving 8 you, though? 9 A. Huh-uh, it was popping. It was 10 hurting. I was hurting worser when I 11 left there than I was when I went in. 12 Q. Okay. Did you ever tell anybody 13 that you -- 14 A. I told Mark, the one that was 15 doing the therapy. He went over there 16 and talked to Howorth and told him it was 17 just popping and cracking, popping and 18 cracking. 19 Q. Okay. Did you ever tell anybody 20 that you felt like physical therapy was 21 helping you? 22 A. It wasn't. It was hurting. 23 Q. All right. I understand. I

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<p style="text-align: right;">Page 117</p> <p>1 understand, but I'm not sure that I'm 2 understanding the answer to my question. 3 Did you ever tell anybody, Dr. Howorth or 4 Ms. Victoria or anybody -- 5 A. I told Dr. Howorth that it was 6 hurting worse than it was doing any good. 7 Q. Okay. Did you ever tell 8 Dr. Howorth that physical therapy was 9 helping? 10 A. No, I never did tell him it was 11 helping me. 12 Q. Okay. Did you ever tell 13 Ms. Victoria that physical therapy was 14 helping? 15 A. No. She just asked me was I 16 doing it, and I told her, "Yeah, I was 17 trying to do the best I could with it." 18 Q. Okay. So, it's your testimony 19 that physical therapy never was helpful 20 to you? 21 A. Huh-uh. It was hurting me worse 22 than it did anything else. I don't know 23 whether it was the screws in it or what,</p>	<p style="text-align: right;">Page 119</p> <p>1 pain was reduced because of physical 2 therapy and since your previous visits? 3 A. I don't understand what you're 4 saying here. 5 Q. Did you ever tell Dr. Howorth 6 that physical therapy was making the pain 7 less? 8 A. No. I told him it was making it 9 worse. 10 Q. Okay. And he was keeping you on 11 light duty -- 12 A. Yeah. 13 Q. -- at work? 14 A. I was still using one arm. I 15 couldn't pick up nothing with this one 16 (indicating). 17 Q. Now, were you taking pain 18 medication the whole time? 19 A. Well, what Dr. Shirah give me. 20 And then he was giving me some. I think 21 it was Darvocet. 22 Q. "He" being Dr. Howorth? 23 A. Howorth. After I had surgery,</p>
<p style="text-align: right;">Page 118</p> <p>1 but it was hurting. 2 Q. And Dr. Howorth kept you going 3 to physical therapy? 4 A. For two and a half months. 5 Q. Okay. Did you ever ask 6 Ms. Victoria to make them stop physical 7 therapy? 8 A. No. I just asked him, and he 9 stopped it. He called over and told Mark 10 if it's hurting him worse than it's doing 11 him any good, we'll just stop it. 12 Q. Okay. All right. After January 13 the 19th, you went back and saw 14 Dr. Howorth on February the 8th. Do you 15 have any recollection of those specific 16 visits? 17 A. Nothing besides he'd x-ray it 18 every time I'd go. And that's about it. 19 He just x-rayed it. 20 Q. Did you ever tell him that you 21 were only having a little bit of pain? 22 A. No. 23 Q. Did you ever tell him that the</p>	<p style="text-align: right;">Page 120</p> <p>1 he give me Darvocet for a while there. 2 Q. Okay. And after you -- do you 3 remember how many pills he gave you or 4 tablets? 5 A. About 20 at a time, I think. It 6 wasn't many. 7 Q. Did you get several 8 prescriptions? 9 A. Oh, yeah. 10 Q. Where did you have your 11 prescriptions filled? 12 A. Wal-Mart. They paid for it. 13 Q. Okay. 14 A. As long as I was in therapy, I 15 had to have something for pain. 16 Q. Was there ever a period of 17 time -- well, let met ask it this way: 18 So, while you were actually going to 19 physical therapy, did you take pain 20 medication continuously? 21 A. I had to try to take it where I 22 could get some sleep to go to work. 23 That's the only way I could do it.</p>

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<p style="text-align: right;">Page 121</p> <p>1 Q. During the time that you were 2 going to physical therapy, was there ever 3 a time period of weeks, days, where you 4 didn't take pain medication?</p> <p>5 A. I took one every day. That's 6 the only way I could get a little bit of 7 sleep where I could work. I had to.</p> <p>8 Q. Do you remember what he was 9 giving you for the pain?</p> <p>10 A. Well, one time it was Lortab. 11 And then he changed it to Darvocet. You 12 know, because Lortab wasn't doing too 13 good, so he said, "Well, I'll give you 14 Darvocet." And then one time, he give me 15 something else. I can't remember what 16 the name was. He give me another 17 different kind one time.</p> <p>18 Q. And while you were going to 19 Dr. Howorth and working light duty, 20 that's when you started having all the 21 problems with your legs, and that's when 22 you went to your other doctor?</p> <p>23 A. Other doctor.</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. And you had two surgeries in 2 March, one to your heart and one to your 3 leg?</p> <p>4 A. Yeah.</p> <p>5 Q. Ten days apart?</p> <p>6 A. One, I think, was on the 4th. I 7 think the other was on the 14th, I think.</p> <p>8 Q. Were you having -- tell me how 9 your shoulder was hurting you after the 10 fact.</p> <p>11 A. After I had the surgery?</p> <p>12 Q. Yes, sir.</p> <p>13 A. It was just excruciating pain. 14 It feels like something scrubbing in 15 there all the time. And there's a 16 certain way I can move it, and it just 17 pops. It will just pop. And I can't 18 raise it up.</p> <p>19 Q. And physical therapy was making 20 it worse and never did help it?</p> <p>21 A. No, it wasn't helping at all. 22 Mark said he hadn't never seen anybody 23 like that. It was just popping and</p>
<p style="text-align: right;">Page 122</p> <p>1 Q. All right. Now, that wasn't 2 covered by comp, was it?</p> <p>3 A. Huh-uh, my wife had to pay that 4 with her insurance.</p> <p>5 Q. Okay. And you're fine with 6 that, right, because that's not -- you 7 don't think that's related to your 8 shoulder injury, do you?</p> <p>9 A. No. He just couldn't find no 10 circulation in my legs.</p> <p>11 Q. And it was in about March that 12 you decided -- that he told you that you 13 could stop physical therapy; is that 14 right?</p> <p>15 A. Yeah. After I went and had the 16 stint and artery and everything put in, 17 he told me to just go ahead and just stop 18 the therapy.</p> <p>19 Q. Did he tell you that he wanted 20 to start it back up sometime later on?</p> <p>21 A. No, he never did say. He said 22 we'll just stop it because I told him it 23 was hurting me worse than it was helping.</p>	<p style="text-align: right;">Page 124</p> <p>1 cracking every time he tried to move it. 2 It was just popping, cracking, popping, 3 cracking. I'd nearly jump off the bed 4 sometimes it was hurting so bad.</p> <p>5 Q. You did -- you wanted to jump 6 off?</p> <p>7 A. Yeah. It was hurting so bad 8 sometimes, I nearly about jumped off the 9 bed.</p> <p>10 Q. Okay. Oh. I would hurt so 11 bad --</p> <p>12 A. Yeah.</p> <p>13 Q. -- it would make you almost 14 jump --</p> <p>15 A. Yeah.</p> <p>16 Q. I thought you were talking about 17 wanting to jump off the bed.</p> <p>18 A. A certain way he'd try to move 19 my shoulder, it would pop. Boy, I'd 20 nearly about come off the bed.</p> <p>21 Q. And the bed being the table?</p> <p>22 A. The table he was doing physical 23 therapy on.</p>

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<p style="text-align: right;">Page 125</p> <p>1 Q. Okay. You have to forgive me.    2 I was thinking about my children jumping    3 on the bed, and I was wondering why --    4 A. And he had a lady helping him.    5 You know, she vouched for the same thing.    6 She said, "I ain't never seen one pop    7 like that." They couldn't figure it out    8 either. He even went over there and    9 talked to Howorth, and Howorth said he    10 couldn't figure it out.    11 Q. All right. And the last time    12 you went to see Dr. Howorth was in May of    13 2005; right?    14 A. Yeah. He give me a Cortisone    15 shot the last time I've been back to see    16 him.    17 Q. Okay. Did he release you at    18 that time?    19 A. Yeah.    20 Q. Or did he say don't come back?    21 A. He said, "You can come back in    22 six months. I can give you another    23 Cortisone." He said, "That's about all I</p>	<p style="text-align: right;">Page 127</p> <p>1 question is: If Dr. Howorth told you    2 that you didn't need to come back, did    3 Ms. Victoria or somebody at CMI call you    4 and say --    5 A. Huh-uh, not as I know of.    6 Q. Okay. Have you tried to make a    7 phone call to ask them, "Hey, can I go    8 back to the doctor"?"    9 A. No.    10 Q. Have you thought about it?    11 A. I'm not employed there anymore.    12 Q. Okay.    13 A. Because if I go back, I'll have    14 to pay for it myself.    15 Q. Okay. And that's just what    16 you've concluded on your own; right?    17 A. If I don't work there anymore,    18 I'm pretty sure they wouldn't pay it.    19 Q. Okay. So, the last time you saw    20 Dr. Howorth, you had stopped working for    21 a couple of months?    22 A. Yeah, because I had to go have    23 all this other stuff done.</p>
<p style="text-align: right;">Page 126</p> <p>1 can do for you. He said, "There's so    2 much bursitis in it, that's about all I    3 can do." He said, "I can't give them to    4 you but twice a year."    5 Q. Did you go back in November?    6 A. I hadn't been back.    7 Q. Why not?    8 A. I just hadn't been back. See, I    9 have to pay for it now because workman's    10 comp is through with me I guess. So, I'd    11 have to pay for it out of my pocket.    12 Q. How do you know worker's comp is    13 through with you?    14 A. Well, I ain't been back since    15 April.    16 Q. Okay. But did somebody at    17 worker's comp tell you, "Okay. We're    18 done. You're on your own"?"    19 A. After he dismissed me.    20 Q. Okay.    21 A. After he dismissed me, I went    22 and had all these other surgeries done.    23 Q. Okay. But if doctor -- well, my</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. For the leg. Okay.    2 And I may have asked you this    3 early on, but do you remember the actual    4 day that you told Wal-Mart, "Okay. I'm    5 not coming back. I can't work anymore"?"    6 A. I went up there it was in    7 August.    8 Q. Of last year?    9 A. August of last year. And she    10 said, "We thought you was still on    11 leave." I said, "No." I said, "He told    12 me I could come back." And she said,    13 "Well, he give you another 30-day leave."    14 I said, "I didn't even know it." You    15 know, they had extended it 30 days, and I    16 didn't even know it. And this was in    17 August. And she said, "Well, what are    18 you going to do?" I said, "Well, I    19 can't -- my legs won't let me work, and    20 my shoulder won't let me work. I guess    21 I'll have to take a medical leave, I    22 mean, a medical discharge." She said,    23 "Okay. If that's the way you -- you</p>

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<p>1 know, if you can't work, you know, you 2 can't work."</p> <p>3 Q. Did anybody at the store 4 encourage you to come back?</p> <p>5 A. No.</p> <p>6 Q. To come back to work?</p> <p>7 A. (Witness nods head negatively.)</p> <p>8 Q. The people at the store were 9 always fine to you, weren't they? They 10 weren't ever not nice or --</p> <p>11 A. I didn't get along with Jonathan 12 that good.</p> <p>13 Q. Who's Jonathan?</p> <p>14 A. He was the manager. He was the 15 head manager.</p> <p>16 Q. All right.</p> <p>17 A. But I dealt with him, but, you 18 know.</p> <p>19 Q. Have you been seen by any other 20 doctor since May of 2005 for your 21 shoulder?</p> <p>22 A. Huh-uh (negative.)</p> <p>23 Q. Is that a no?</p>	<p>1 A. No.</p> <p>2 Q. And you're not getting any 3 additional benefits right now?</p> <p>4 A. I ain't getting nothing. I 5 ain't got nothing since March. I had 6 short-term disability, but I paid for 7 that out of my check. And when they 8 released me on my legs and everything, 9 they stopped that. And I couldn't work. 10 So, I couldn't draw my unemployment. 11 When you ain't able to work, you can't 12 draw unemployment. So, I'm just stuck. 13 I haven't drawed any money since May of 14 last year.</p> <p>15 Q. So, you got disability through 16 your job at Wal-Mart?</p> <p>17 A. Yeah. I paid it in myself, 18 short-term disability.</p> <p>19 Q. And after you left Wal-Mart --</p> <p>20 A. When these surgeries, that's all 21 I drawed.</p> <p>22 Q. And you're still out of work?</p> <p>23 A. Yeah.</p>
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<p>1 A. No.</p> <p>2 Q. Okay. And did Dr. Howorth 3 actually -- do you remember him saying, 4 "You are released, you can go back"?</p> <p>5 A. He never did release me back to 6 go back to full duty on my arm.</p> <p>7 Q. Okay. He always just said that 8 you would be on light duty?</p> <p>9 A. Limited. Limited to no more 10 than five pounds.</p> <p>11 Q. Did he ever tell you that he 12 thought that one day you'd be able to go 13 back to work with no restrictions?</p> <p>14 A. He told me I probably was going 15 to have trouble out of it from now on.</p> <p>16 Q. But do you recall him ever 17 saying, "In two months, you're going to 18 be able to go back to work without any 19 problems"?</p> <p>20 A. No, he never did tell me that.</p> <p>21 Q. Now, you have not filed another 22 lawsuit for worker's compensation 23 benefits?</p>	<p>1 Q. Do you think you'll ever be able 2 to go back to work anywhere?</p> <p>3 A. Not with my leg and shoulder 4 like it is.</p> <p>5 Q. Okay. Which is worse, your leg 6 or your shoulder?</p> <p>7 A. Well, it's hard to say. One of 8 them is hurting all the time.</p> <p>9 Q. Okay. But it's a combination of 10 the two?</p> <p>11 A. Yeah. It's hard to sleep on 12 this side, and it's hard to sleep on this 13 side (indicating).</p> <p>14 Q. How long are you able to like 15 stand up without your legs just 16 getting -- do they go numb?</p> <p>17 A. Oh, yeah. I can't even feel my 18 feet right now. See, when he went in 19 here, they sent me to -- he told me they 20 probably hit a nerve right here in this 21 one because this is just dead down 22 through here. This whole leg right in 23 here is just dead (indicating).</p>

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<p>1 Q. You're hitting your shin?</p> <p>2 A. Yeah, it's dead. And it's</p> <p>3 just -- and I ain't got no feeling in</p> <p>4 here. I can't even feel my toes.</p> <p>5 Q. Do you ever have feeling in your</p> <p>6 toes?</p> <p>7 A. They just stay numb and cold.</p> <p>8 Q. Numb and cold?</p> <p>9 A. He said he may have to go back</p> <p>10 and do the artery in this leg too. He's</p> <p>11 not for sure.</p> <p>12 Q. But you're indicating the right</p> <p>13 leg now?</p> <p>14 A. Yeah. He said I've got to go</p> <p>15 back -- I've got to go back the end of</p> <p>16 this month. It will be a six-month</p> <p>17 checkup. He'd check the circulation in</p> <p>18 my legs again.</p> <p>19 Q. Okay. How is the circulation in</p> <p>20 your left leg since they did that</p> <p>21 surgery?</p> <p>22 A. It still hurts every day. And</p> <p>23 my knee swells up, my ankle swells up</p>	<p>1 A. April 22nd last year.</p> <p>2 Q. And you've been to the doctor to</p> <p>3 fill out the disability exam?</p> <p>4 A. Yeah. They sent me to</p> <p>5 Dr. Peterson, then they sent me to</p> <p>6 Birmingham, they sent me to a</p> <p>7 psychiatrist and everywhere else.</p> <p>8 Q. Okay. Where did you go see a</p> <p>9 psychiatrist?</p> <p>10 A. I seen Dr. -- I think her name</p> <p>11 is Dr. Kurtz in Opelika. I got all kind</p> <p>12 of doctor's numbers wrote down. I think</p> <p>13 her name is Robin Kurtz.</p> <p>14 Q. What has she said for you?</p> <p>15 A. Psychiatrist?</p> <p>16 Q. Yeah.</p> <p>17 A. She said, "If I could put you on</p> <p>18 the disability, I would put you on it in</p> <p>19 a heartbeat." She said, "You need it</p> <p>20 bad." Robin Kurtz in Opelika. Kurtz is</p> <p>21 K-u-r-t-z.</p> <p>22 And they sent me to Dr. Bruce</p> <p>23 Pava in Birmingham.</p>
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<p>1 every night. And it's just swelled up so</p> <p>2 bad I can't hardly stand it.</p> <p>3 Q. Right leg about the same as the</p> <p>4 left leg?</p> <p>5 A. Well, it ain't quite as bad as</p> <p>6 the left one.</p> <p>7 Q. Is it getting worse?</p> <p>8 A. Yeah, I don't think they're</p> <p>9 getting any better.</p> <p>10 Q. No. I was asking is the right</p> <p>11 one getting worse.</p> <p>12 A. Oh. Yeah, it's worser than what</p> <p>13 it was because I try to put more weight</p> <p>14 on it to stay off my left one as much.</p> <p>15 And, so, it's hurting me more on my right</p> <p>16 one now because I'm trying to, you know,</p> <p>17 keep some of the weight off my left one</p> <p>18 because it hurts so bad.</p> <p>19 Q. Okay. Now, you filed a claim</p> <p>20 for Social Security disability, right?</p> <p>21 A. Disability, uh-huh.</p> <p>22 Q. Do you remember when you did</p> <p>23 that?</p>	<p>1 Q. Is he also a psychiatrist?</p> <p>2 A. No. He's the one on my legs.</p> <p>3 He's the one that he believed he hit a</p> <p>4 nerve in this leg when he done the</p> <p>5 surgery, that's the reason it's dead.</p> <p>6 Q. Where did you have that surgery</p> <p>7 done?</p> <p>8 A. Opelika.</p> <p>9 Q. Okay. So, he came down here to</p> <p>10 do it?</p> <p>11 A. Dr. Lazenby is already in</p> <p>12 Opelika.</p> <p>13 Q. Oh, I'm sorry. I thought you</p> <p>14 said Pava was in Birmingham.</p> <p>15 A. No. They sent me -- the</p> <p>16 disability people sent me to Birmingham</p> <p>17 to Dr. Pava.</p> <p>18 Q. Okay. To look at your legs?</p> <p>19 A. To look at my legs. But he</p> <p>20 wouldn't tell me nothing. He said they'd</p> <p>21 have to tell me that.</p> <p>22 Q. All right.</p> <p>23 MR. BROWN: And you're</p>

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1 representing him on the Social Security; 2 right? 3 MR. TINNEY: Right. 4 Q. (By Mr. Brown) Following the 5 femoral bypass that you had, did any of 6 those doctors say that you should have 7 been able to go back to work, or did 8 they -- was there ever a point in time 9 where they said, you know, after you 10 recuperate for a month or so -- 11 A. Dr. Lazenby told me it was up to 12 me. He said, "You know how your legs 13 feel." He said, "If you can work on 14 them, you can work on them. If you 15 can't, you know, that will be up to you." 16 And I went back and tried it, and I 17 couldn't do it. My legs was hurting me 18 so bad I couldn't do it. 19 Q. You went back and tried at 20 Wal-Mart? 21 A. Yeah. But I still wasn't using 22 my arm. 23 Q. Okay. I understand that.	1 MR. TINNEY: Anniston. You 2 know, it's a local office. 3 MR. BROWN: I was wondering if 4 it was Anniston or if it was down in 5 Opelika. 6 MR. TINNEY: Yeah, Anniston. 7 THE WITNESS: Anniston. They 8 sent me a letter and denied it about six 9 or seven months ago. 10 Q. (By Mr. Brown) All right. 11 Worker's comp -- I may have asked you, I 12 may not have. If I did, I apologize. 13 But worker's comp paid for all your 14 physical therapy too; right? 15 A. Yeah. 16 Q. Okay. 17 A. They paid for that and the 18 medicine, whatever I had to have. 19 Q. And I know that we've talked a 20 lot about the conversations that you had 21 with Ms. Heppes. But the conversations 22 that you are critical of and that are 23 based -- that this lawsuit is based on,
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1 A. But my legs just wouldn't let me 2 do it after I had the surgery. It was 3 just hurting so bad I couldn't do it. 4 Q. How many times -- how many days 5 did you try to go back to work at 6 Wal-Mart? 7 A. Well, after he got through in 8 March, I went back and worked -- I don't 9 think I worked but about one week. I 10 couldn't stand it. So, I took a -- they 11 give me a little 30-day leave. And then 12 I went back and I tried it, and I 13 couldn't do it. So, the only alternative 14 I had was to take a medical discharge. 15 Q. And your Social Security, you 16 have not gotten anything yet? 17 A. No, they denied it. 18 Q. Where was that filed? Do you 19 know? 20 A. What? 21 Q. The Social Security claim. 22 A. He's handling my Social 23 Security.	1 are the conversations that occurred 2 between October the 27th when Dr. Howorth 3 said you need surgery and November the 4 25th or 26th when they called you and 5 said you can get it done? 6 A. Yeah. 7 Q. Okay. So, it's about a 8 one-month period of time? 9 A. Well, I got hurt on the 27th of 10 September is when I got hurt. 11 Q. All right. Between the 28th of 12 September when you got hurt -- 13 A. Uh-huh. 14 Q. -- the times that you were 15 seeing Dr. Shirah -- 16 A. Yeah. 17 Q. -- and she was talking to you or 18 you were having any conversations with 19 her, that was okay; right? 20 A. Yeah. I was just taking pain 21 pills and everything, but it wasn't 22 getting any better. 23 Q. But that's when Dr. Shirah was

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<p>1 saying, you know, I'm not sure if it's a  2 strain or --  3 A. Yeah.  4 Q. Okay.  5 A. Just what he treated me for was  6 a muscle pull to start with.  7 Q. Okay. But you weren't yelling  8 at --  9 A. No.  10 Q. Or I'm sorry. Not yelling. You  11 weren't talking to anybody about, "I need  12 surgery" until Dr. Howorth told you that  13 you needed it?  14 A. No. The second week I went to  15 Dr. Shirah, I told Dr. Shirah, I said,  16 "Something is not right." He said,  17 "Well, you're probably right. We're  18 going to have to do an MRI. That will be  19 the best thing we can do before we'll  20 ever know what's wrong with it."</p>	<p>1 A. A pretty good little ways.  2 MR. BROWN: It's not 70 miles,  3 is it?  4 MR. TINNEY: About 80.  5 THE WITNESS: It wasn't but  6 about 45 to Alex City.  7 Q. (By Mr. Brown) Okay.  8 A. 45, 46.  9 Q. All right. Were you happy with  10 Dr. Howorth?  11 A. He was a good doctor, you know.  12 He just wanted me in there earlier than  13 what they let me get in.  14 Q. Okay. Have you told me about  15 every conversation that you had with  16 Ms. Heppes?  17 A. I don't know exactly how many I  18 had. Several.  19 Q. Okay. But what your  20 recollection is is just the gist of what  21 y'all were talking about; right?  22 A. Yeah.  23 Q. If you look back at it, can you</p>
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<p>1 Q. That was on the 18th or the 19th  2 of October?  3 A. 19th of October.  4 Q. All right.  5 A. And I took it back to him.  6 Q. All right. And that was on the  7 22nd of October?  8 A. And he said there ain't nothing  9 else I can do for you.  10 Q. And then he said you've got to  11 go to an orthopedist?  12 A. Orthopedic surgeon.  13 Q. Somebody called you and told you  14 to go to Dr. Howorth? They originally  15 wanted you to go to Gadsden?  16 A. Yeah. He called Victoria  17 himself, and she finally set me up in  18 Alex City.  19 Q. Okay. And that was because it  20 was closer for you to drive?  21 A. Yeah.  22 Q. How far is it from here to  23 Gadsden, about 70 miles?</p>	<p>1 close your eyes and specifically recall  2 one particular conversation over all the  3 others?  4 A. Uh-huh (affirmative).  5 Q. Okay.  6 A. It's when I got back from Alex  7 City, and she had denied me from having  8 surgery on that Monday. I went to the  9 store and went in there and called and  10 called her from the store and told her  11 she was killing me.  12 Q. Okay.  13 A. She said, "We're not planning on  14 killing you." I said, "But he wants me  15 to have surgery, and you won't let me  16 have it."  17 Q. And that was within a couple of  18 days after you first saw Dr. Howorth;  19 right?  20 A. That was when I got back from  21 Alex City.  22 Q. The same day?  23 A. She cancelled it before I could</p>

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1 even get back home. 2 Q. But the same -- but it was the 3 same day? 4 A. Uh-huh (affirmative). 5 Q. Okay. That was yes? 6 A. Yeah. 7 Q. Okay. When you left 8 Dr. Howorth's office, did you have an 9 appointment card to be at Russell 10 Hospital or anything like that? 11 A. They told me to go to the 12 hospital on that Friday and get 13 preadmitted and be ready to have surgery 14 on Monday. When I left there, that's all 15 I knew. By the time I got home, my 16 mother-in-law called and said Victoria 17 had done cancelled it before I could even 18 get home. So, I called him back. He 19 said he don't know why she cancelled it. 20 He said, "But you need the surgery." 21 Q. And you called him on the same 22 day? 23 A. Yeah.	1 last name -- is the only one I ever 2 talked to on workman's comp. 3 Q. Okay. 4 A. She's the only one I talked to. 5 Q. And she just told you that she 6 wanted two other doctors to look at it? 7 A. Uh-huh (affirmative). 8 Q. She didn't tell you that she 9 wanted you to be seen by -- 10 A. No. 11 Q. -- just she said she wanted two 12 other doctors? 13 A. She just said she needed all the 14 paperwork they got and she needed the 15 MRI's, that she had two more company 16 doctors that she wanted to look at it. 17 That's when I asked her why. I said, 18 "You've already got two." 19 MR. TINNEY: You already 20 answered the question several times. 21 THE WITNESS: Yeah. I just 22 couldn't figure it out. 23 Q. (By Mr. Brown) Did you take any
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1 Q. Did you talk to him or Amy? 2 A. I talked to Amy. And she said 3 that she had cancelled it. She needed 4 more paperwork and wanted more doctors to 5 look at the MRI before they do anything. 6 Q. Okay. And it's your testimony 7 that that was on the 27th; right? 8 A. It was the first time I seen 9 him, yeah. He wanted me on that Monday 10 to have surgery. They put it off another 11 28 days is what they did. 12 Q. Do you know if you ever talked 13 to anybody named Annie Martin? 14 A. I don't remember no Annie 15 Martin. 16 Q. Do you know if you ever talked 17 to anybody named Becky Quisenberry? 18 A. I don't know no Becky 19 Quisenberry either. 20 Q. Do you know if you ever talked 21 to anybody named Ms. Abbott? 22 A. Not as I know of. 23 Ms. Victoria -- I didn't even know her	1 notes of any of these conversations? 2 A. No. 3 Q. You didn't record any of them, 4 did you? 5 A. No. 6 Q. Do you remember the 7 interrogatories, the questions that I 8 sent that you had to get answered and you 9 signed the responses to? Do you remember 10 those? 11 A. Huh-uh (negative). 12 Q. Okay. I just want to ask you 13 about a couple of them. Before I do 14 that -- 15 A. Oh, yeah. I remember you sent 16 some papers up here, and I signed them. 17 Q. Okay. But you signed that, 18 though; right? 19 A. Yeah. I remember signing it, 20 yeah. I understand what you're talking 21 about now. 22 Q. Okay. 23 A. Yeah.

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<p style="text-align: right;">Page 149</p> <p>1       MR. BROWN: And, John, this is 2 one of the ones that we talked about 3 earlier. I just want to make sure I 4 understand.</p> <p>5       Q. In Interrogatory No. 34, it says 6 "Indicate whether the Plaintiff claims 7 that any injury or permanent damage to 8 his shoulder is the result of the 9 negligence of any physician or hospital." 10 And you said, "To the best of the 11 Plaintiff's knowledge and belief, yes." 12 Could you tell me is there anything that 13 any of the doctors or any of the 14 hospitals did that you think they did 15 wrong with your shoulder?</p> <p>16       A. The only thing they done wrong 17 is they just waited too long to get it 18 fixed.</p> <p>19       Q. Okay.</p> <p>20       A. So it really wasn't the doctor.</p> <p>21       Q. All right. I just wanted to -- 22 I thought that's what we had talked 23 about.</p>	<p style="text-align: right;">Page 151</p> <p>1       the records?</p> <p>2       A. Yeah, I got them faxed to -- 3 see, my daughter-in-law worked for Sandy 4 Holliday at that time.</p> <p>5       Q. What is Sandy Holliday?</p> <p>6       MR. TINNEY: He's a local 7 lawyer.</p> <p>8       THE WITNESS: A local lawyer.</p> <p>9       Q. (By Mr. Brown) Okay.</p> <p>10       A. She worked at his office. So, 11 she -- that's the only place I could get 12 them faxed to.</p> <p>13       Q. Okay.</p> <p>14       A. Because when I was trying to get 15 my disability, I had to have all my 16 records faxed to me.</p> <p>17       Q. Okay. And they never faxed you 18 the records; is that right?</p> <p>19       A. I got them all except for 20 Dr. Rhodes, I think.</p> <p>21       Q. Were they faxed to you.</p> <p>22       A. (Witness nods head 23 affirmatively.)</p>
<p style="text-align: right;">Page 150</p> <p>1       So, if you said "yes" --</p> <p>2       A. I might not have understood what 3 it was.</p> <p>4       Q. Okay. So, you've explained your 5 answer better today than you did when you 6 answered it?</p> <p>7       A. Yeah.</p> <p>8       Q. That's fine.</p> <p>9       Now, in Interrogatory No. 30, it 10 makes reference to part of your 11 complaint. And in your complaint -- 12 well, I asked you on the suppression 13 claim to "describe what action you took 14 to obtain your medical records from 15 Dr. Howorth or Dr. Shirah during the time 16 that you claimed that CMI were the only 17 ones getting medical records." And you 18 said that you requested that the records 19 be faxed to his daughter-in-law?</p> <p>20       A. Uh-huh (affirmative).</p> <p>21       Q. So, did you ask -- during some 22 of these conversations, did you ask Amy 23 or somebody at Dr. Howorth's to fax you</p>	<p style="text-align: right;">Page 152</p> <p>1       Q. Is that yes?</p> <p>2       A. Yeah.</p> <p>3       Q. Okay. Before you filed this 4 lawsuit or after you filed this lawsuit?</p> <p>5       A. After.</p> <p>6       Q. Okay. So, it was after you had 7 already hired Mr. Tinney, but before you 8 had done the disability stuff; right?</p> <p>9       A. Yeah.</p> <p>10       Q. Okay. Did you have to pay for 11 the records? They gave them to you --</p> <p>12       A. Right.</p> <p>13       Q. -- free; right? I'm sorry.</p> <p>14       That was a bad question. I asked you two 15 questions at once. They sent you the 16 records?</p> <p>17       A. Yeah.</p> <p>18       Q. Did you have to pay for them?</p> <p>19       A. Huh-uh (negative).</p> <p>20       Q. No?</p> <p>21       A. I told them no. I didn't have 22 to pay for it. I just told them I was 23 trying to get my disability, I needed my</p>

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<p>1 records.</p> <p>2 Q. All right. If CMI has paid for 3 all your medical bills and they've paid 4 you the temporary total payments, you 5 don't contend that they owe you any 6 additional benefits right now, do you?</p> <p>7 A. All the pain and suffering I 8 went through.</p> <p>9 Q. Okay. Just things related to 10 this lawsuit; is that right?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay.</p> <p>13 MR. TINNEY: And just for the 14 record so that, you know, we're operating 15 under any, you know, misassumption, if he 16 gets a disability rating, they may owe 17 him more comp.</p> <p>18 MR. BROWN: If it's -- yeah.</p> <p>19 MR. TINNEY: Yeah. Plus 20 anything -- you know, any medical 21 associated with it. I mean, they own any 22 benefits they owe under the --</p> <p>23 MR. BROWN: But as of right now,</p>	<p>1 A. No.</p> <p>2 Q. Now, have you been to any 3 other -- other than the psychiatrist that 4 you went to see for your disability, have 5 you been to any other psychiatrist or 6 psychologist for anything related to your 7 shoulder?</p> <p>8 A. Huh-uh, no.</p> <p>9 Q. Have you been to any kind of 10 counseling?</p> <p>11 A. No.</p> <p>12 Q. Have you been to any kind of 13 pain management?</p> <p>14 A. No.</p> <p>15 Q. How has this shoulder surgery 16 affected you?</p> <p>17 A. It affects me a lot.</p> <p>18 Q. Okay. Well, tell me as best you 19 can how.</p> <p>20 A. I barely can use it a lot of 21 days. I can't raise it up.</p> <p>22 Q. Okay. How else?</p> <p>23 A. I just can't raise it up. I can</p>
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<p>1 you don't know of any person whose given 2 him any permanent partial disability upon 3 which an award could be based.</p> <p>4 MR. TINNEY: No.</p> <p>5 MR. BROWN: All right. We may 6 want to talk about that after we get 7 through.</p> <p>8 MR. TINNEY: Yeah. I have not 9 pursued it, but I'm sure there's 10 something there.</p> <p>11 MR. BROWN: Okay.</p> <p>12 Q. And since you filed this 13 lawsuit, you have not talked to 14 Ms. Heppes anymore; is that right?</p> <p>15 A. Huh-uh (negative).</p> <p>16 Q. Was that no?</p> <p>17 A. No.</p> <p>18 Q. You haven't asked for another 19 doctor?</p> <p>20 A. No.</p> <p>21 Q. And you haven't asked for 22 authority or the ability to go back to 23 Dr. Howorth or anybody else?</p>	<p>1 use it like right here, you know. But I 2 can't just -- I can't do none of this. 3 It won't go up. I have to push it up 4 with my other arm. It's just like it 5 catches. It don't want to go.</p> <p>6 Q. And I think I asked you this 7 before. I probably did. But if you had 8 not had the leg surgery, you would still 9 be working, right, if your legs weren't 10 bothering you?</p> <p>11 A. I probably still be working with 12 one arm.</p> <p>13 Q. Okay. I understand.</p> <p>14 A. Yeah.</p> <p>15 Q. But you would still be working 16 as best you could?</p> <p>17 A. Yeah, best I could.</p> <p>18 Q. Were there any activities that 19 you -- any sports or hobbies that you did 20 before the surgery that you can't do 21 anymore?</p> <p>22 A. I ain't been able to play no 23 sports in a while.</p>

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Page 157	Page 159
1 Q. Okay. In how long?	1 A. I ain't been fishing in about
2 A. Well, I'm 51. I ain't played	2 three or four years.
3 none since I was about 30-something years	3 Q. Before the shoulder?
4 old.	4 A. Before the shoulder.
5 Q. Okay.	5 Q. Okay. Were you a member of any
6 A. It's been 20-something years, I	6 church here locally?
7 imagine.	7 A. I'm a member of Midway Full
8 Q. So, you're not going to come	8 Gospel Church.
9 back later and say --	9 Q. Okay. And did you do any kind
10 A. No.	10 of church mission trips or anything
11 Q. -- that you were on a church	11 before the surgery?
12 softball league or something like that	12 A. No, sir.
13 before you hurt your shoulder?	13 Q. Okay. Are you a member of any
14 A. No. My leg won't let me do	14 kind of civic clubs like Civitans or
15 that. My shoulder won't either.	15 Jaycees?
16 Q. Well, but before your shoulder	16 A. No, sir.
17 started hurting, you didn't do it?	17 Q. And you think -- or do you agree
18 A. No.	18 that it took a while to get the surgery
19 Q. Okay. Did you hunt or fish?	19 done, longer than you wanted it to --
20 A. I ain't been fishing in three or	20 A. Yes.
21 four years. I don't even go hunting	21 Q. -- because of miscommunications
22 anymore.	22 between CMI and the doctors?
23 Q. Did you hunt before you hurt	23 A. Yes.
Page 158	Page 160
1 your shoulder?	1 MR. TINNEY: And I'm going to
2 A. Oh, I use to hunt all the time.	2 object to the, you know, the form of that
3 Q. Deer hunt, bird hunt, what kind	3 question because we -- you classify it as
4 of hunting?	4 miscommunications. We don't know, you
5 A. Squirrel hunting, something like	5 know, what it is.
6 that. I never did even deer hunt very	6 Q. (By Mr. Brown) Well, and I'll
7 much.	7 define miscommunications as from your
8 Q. Okay. So, just squirrel	8 conversations with the doctor's office
9 hunting?	9 and from your conversations with
10 A. See, I ain't really done any	10 Ms. Heppes, that both of those people,
11 kind of fishing or hunting in years.	11 the doctor and CMI told you they were
12 Q. Okay. Before your shoulder	12 talking back and forth; right?
13 injury?	13 A. Yeah. The doctor wanted to do
14 A. Yeah. I used to, yeah, a long	14 it, and they didn't want to let him do
15 time ago.	15 it.
16 Q. All right. How long before your	16 Q. And they were saying, "We sent
17 shoulder injury did you last go hunting	17 the records," and they were saying, "No,
18 on a regular basis?	18 we don't have the records"?
19 A. I imagine it's been over ten	19 A. That's true.
20 years.	20 Q. Okay.
21 Q. How long before the shoulder	21 A. That's true.
22 injury did you last go fishing on a	22 Q. And it was that communication or
23 regular basis?	23 lack of communication between those two

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<p style="text-align: right;">Page 161</p> <p>1 people that delayed you getting the 2 surgery?</p> <p>3 MR. TINNEY: Now, I'm going to, 4 again, object, you know, to that. And I 5 guess I've got to instruct him to not 6 answer that question because the 7 decision -- you know, the decision as to 8 why he didn't get it didn't come from 9 him.</p> <p>10 MR. BROWN: I understand.</p> <p>11 MR. TINNEY: And he can't really 12 state, you know, what was the reason. 13 They were up there saying, you know, 14 we've got to get two doctors to look at 15 it. And that appears to be, you know, 16 what they were telling him. And we don't 17 know what the issue was between, you 18 know, them and the doctors. So, we 19 really can't state.</p> <p>20 MR. BROWN: Okay.</p> <p>21 Q. But in addition to her telling 22 you that she wanted to have other doctors 23 look at it --</p>	<p style="text-align: right;">Page 163</p> <p>1 was saying, "I did it all," she was 2 saying, "No, they haven't done it all." 3 A. Yeah. 4 Q. Okay. 5 A. And I was suffering. 6 Q. Did you ever make any phone 7 calls to them from any place other than 8 your mother's house or your 9 mother-in-law's house, the two numbers 10 you gave me earlier? 11 A. No. 12 Q. Oh. I think you said you called 13 them one time from the store? 14 A. I called them one time from the 15 store. 16 Q. Do you have copies of any of 17 your phone bills or your mother-in-law's 18 phone bills or your mother's phone bill 19 from that time? 20 A. I don't know what my 21 mother-in-law done with them. 22 Q. Okay. 23 A. She's 74 years old. I don't</p>
<p style="text-align: right;">Page 162</p> <p>1 A. Yes. 2 Q. -- she was also telling you that 3 it couldn't be approved until they got 4 all the paperwork from the doctor? 5 A. That's what she said. 6 Q. Okay. So, wanting to -- her 7 telling you allegedly that she wanted to 8 have it looked at by another doctor was 9 not the only reason that she told you 10 that she couldn't schedule surgery yet? 11 A. She just said she had to have 12 two more doctors look at it. 13 Q. And that she didn't have all the 14 documents or the paperwork from 15 Dr. Howorth's office; right? 16 A. Well, he told me he sent it the 17 same week she asked for it. 18 Q. Okay. 19 A. I called him myself. He said, I 20 sent everything I've got. It's up to her 21 now." 22 Q. And I understand that. But she 23 was also telling you -- while the doctor</p>	<p style="text-align: right;">Page 164</p> <p>1 know what she done with them. 2 Q. I understand. Did you have to 3 pay her back for the long distance phone 4 calls? 5 A. No. She told me not to worry 6 about it. 7 MR. TINNEY: Did we establish 8 whether that was an 800 number or not? 9 MR. BROWN: You know, I don't 10 know. 11 Q. Do you remember the number that 12 you called out there to CMI? 13 A. I got it here somewhere. I was 14 supposed to have had it in here. I can't 15 find it now. Victoria, workman's comp, 16 1-800-527-0566, extension 20 -- 17 Q. Well, hold on a minute. You 18 were talking faster than I can write. 19 (800) 527 -- 20 A. (800) 527-4566, extension 20776. 21 That's Victoria, workman's comp. 22 Q. Okay. Is that a business card 23 that you have here?</p>

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<p>1 A. No. It's just a notebook I got 2 all my doctors wrote down, all my 3 medications I'm on, every doctor I've 4 went to and everything.</p> <p>5 MR. BROWN: Would you object if 6 I looked at that?</p> <p>7 MR. TINNEY: Let me look at it 8 first.</p> <p>9 MR. BROWN: Okay.</p> <p>10 THE WITNESS: It's just -- I got 11 every doctor wrote down where I was 12 trying to get my disability and where I, 13 you know, had to send to get my medical 14 records and first one thing and then 15 another.</p> <p>16 Q. (By Mr. Brown) And other than 17 the one conversation that you had with 18 Dr. Howorth on the day you had surgery 19 where he said if we hadn't waited so 20 long, we could have done it a different 21 way --</p> <p>22 A. He said he could have lasered it 23 back.</p>	<p>1 problems with my therapy the reason I was 2 having so much pain with my therapy.</p> <p>3 MR. TINNEY: I don't have a 4 problem with you looking at it.</p> <p>5 THE WITNESS: It's just a bunch 6 of doctors and things I've had to go to.</p> <p>7 Q. (By Mr. Brown) Who is Laura 8 Knight?</p> <p>9 A. That's my aunt. She's had back 10 surgery.</p> <p>11 Q. You hadn't never made phone 12 calls from her house, have you?</p> <p>13 A. No. She lives in Lanett.</p> <p>14 Q. Lanett?</p> <p>15 A. Uh-huh.</p> <p>16 Q. I'll go by her house on the way 17 home. The other phone numbers -- you 18 said your number is 863-1591. That's 19 your mom?</p> <p>20 A. Huh-uh (negative).</p> <p>21 Q. Or that's your mother-in-law?</p> <p>22 A. That's -- my mother-in-law is 23 6195, my mother-in-law is. I don't think</p>
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<p>1 Q. Okay. Has any other doctor told 2 you that your shoulder condition now is 3 the result of it taking too long to get 4 approval to have surgery?</p> <p>5 A. No, because I've not been to 6 another one.</p> <p>7 Q. Okay. And the only time 8 Dr. Howorth told you that was the day you 9 had the surgery itself?</p> <p>10 A. Yes. He said, "I had to put 11 pins in it, and it was so full of 12 bursitis that I couldn't laser it, so I 13 had to do the best I could with it and 14 put pins in it to hold it.</p> <p>15 Q. And he didn't repeat that 16 conversation during any of your office 17 visits, did he?</p> <p>18 A. No. He just told me after he 19 x-rayed it one time, one of the screws 20 looked like it had moved and was 21 scrubbing my shoulder bone.</p> <p>22 Q. I got you.</p> <p>23 A. And he said that could be the</p>	<p>1 I got it wrote in there.</p> <p>2 Q. Whose number 863-1591?</p> <p>3 A. It ain't got no name on it?</p> <p>4 Q. It says, "my NO."</p> <p>5 A. Oh, I don't know. I don't know 6 what that number is doing in there then. 7 "My NO." I don't know. Oh. At one 8 time, I had a cell phone. At one time, 9 but I don't have it no more. That's what 10 that was. My phone.</p> <p>11 Q. Okay.</p> <p>12 A. That's the reason I had "My NO" 13 on it. At one time, I had a cell phone.</p> <p>14 Q. All right. Did you ever call 15 CMI --</p> <p>16 A. No.</p> <p>17 Q. -- from your cell phone?</p> <p>18 A. Huh-uh. It costs too much 19 minutes. I had to buy my minutes, and I 20 just used my mother-in-law's.</p> <p>21 Q. Was it a prepaid phone?</p> <p>22 A. Yeah.</p> <p>23 Q. Was it one of ones that you</p>

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<p style="text-align: right;">Page 169</p> <p>1 like -- I don't know how prepaid --    2 A. Go out at Wal-Mart and buy your    3 minutes.    4 Q. Okay. So, you didn't get a bill    5 from like Sprint or something like that?    6 A. No.    7 MR. BROWN: Who is the provider    8 in these areas?    9 MR. TINNEY: I have no idea. I    10 mean, we've got -- are you talking about    11 all cell phone providers?    12 THE WITNESS: Unicel.    13 MR. TINNEY: Cingular, Unicel.    14 And that's it really.    15 MR. BROWN: Because, I mean, I    16 have T-Mobile, and I have nothing up    17 here.    18 Q. Who is Dr. Russell Peterson?    19 A. That's the one disability sent    20 me to the first time.    21 Q. Okay.    22 A. He's out here in Roanoke. He    23 built a new office right out yonder on</p>	<p style="text-align: right;">Page 171</p> <p>1 David Towers?    2 A. Yeah, that's who pulled my    3 teeth.    4 Q. Okay.    5 MR. BROWN: If you want to take    6 about five minutes and let me look    7 through my notes.    8 (A short break was taken.)    9 Q. (By Mr. Brown) Maybe we're    10 wrapping up. Maybe I'm close to being    11 through. And I'm sorry you've had to    12 listen to me drum on so long.    13 A. That's all right.    14 Q. Have you told me about every    15 conversation that you had with    16 Ms. Heppes?    17 A. As far as I know. I had so    18 many, I couldn't really tell you exactly    19 how many I did have.    20 Q. Okay.    21 A. And from September until I had    22 my surgery, I really don't know.    23 Q. Okay. And if you think of any</p>
<p style="text-align: right;">Page 170</p> <p>1 431.    2 Q. 469 Price Street, Suite D,    3 Roanoke?    4 A. He's got a new office out there    5 on 431 now.    6 Q. Okay.    7 A. That's who disability sent me to    8 first.    9 Q. And then Dr. Bruce Myles,    10 M-y-l-e-s, Pava, P-a-v-a.    11 A. That's Birmingham.    12 Q. Okay. On Montclair Road. He's    13 the one that disability sent you to?    14 A. Disability sent me to them after    15 they sent me to the psychiatrist.    16 Q. And that was Robin Kurtz?    17 A. Robin Kurtz.    18 Q. And Dr. Busby, who is Dr. Busby?    19 A. That's a dentist. I was calling    20 around to get my teeth -- my top teeth    21 pulled, and he was booked up, so I had to    22 get another one?    23 Q. Okay. And that would have been</p>	<p style="text-align: right;">Page 172</p> <p>1 other conversations, will you please just    2 let Mr. Tinney know?    3 A. Yeah.    4 Q. I mean, you may be middle of    5 the night tonight and sit straight up in    6 bed thinking, "Oh. There was one    7 conversation I needed to tell him about."    8 And you've told me everything    9 that you can remember about the    10 conversations?    11 A. Yeah.    12 Q. And you've told me everything    13 that you can remember that she told you,    14 and you've told me everything that you    15 can remember that you told her?    16 A. Uh-huh (affirmative).    17 Q. And have you told me about every    18 conversation that you can remember with    19 Dr. Howorth's office?    20 A. Yeah.    21 Q. Okay. Have you told me about --    22 strike that.    23 Before we get there, did you</p>

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<p>1 have any conversations with the people at 2 the hospital before you went to do the 3 preregistration?</p> <p>4 A. Huh-uh. I went down there and 5 got preregistered on Friday. And then 6 she checked my blood pressure, and she 7 kept me for a little while until my blood 8 pressure came down. And then she sent me 9 home.</p> <p>10 Q. Okay. And you've told me 11 everything that you know to support your 12 claim that CMI wouldn't let you have 13 surgery; right?</p> <p>14 A. They wouldn't let me have it. I 15 don't understand.</p> <p>16 Q. But you've told me every 17 reason --</p> <p>18 A. Yeah. Yeah.</p> <p>19 Q. Okay.</p> <p>20 A. They kept saying they needed 21 more doctors.</p> <p>22 MR. TINNEY: You don't need to 23 go over it again.</p>	<p>1 A. She called me at my 2 mother-in-law's and set me up an 3 appointment in Alex City.</p> <p>4 Q. Did Ms. Heppes ever tell you, "I 5 don't think you need surgery"?</p> <p>6 A. Well, to start with, she told me 7 she thought that I could do therapy. And 8 I just told her on the phone, I said, 9 "Dr. Shirah said it's tore up. You can't 10 do therapy on something that's tore up."</p> <p>11 Q. But then after Dr. Howorth said 12 you need to have surgery --</p> <p>13 A. Yeah.</p> <p>14 Q. -- did she ever call you and 15 tell you, "I'm not going to -- I don't 16 think you need surgery"?</p> <p>17 A. No, she didn't say that.</p> <p>18 Q. Okay. She said, "I've got to 19 get somebody else to look at it"?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And nobody from CMI told 22 you that, "you don't need surgery"; 23 right?</p>
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<p>1 Q. (By Mr. Brown) Doctors and 2 records; right?</p> <p>3 A. Doctors and records.</p> <p>4 Q. I think we've established, you 5 don't know if CMI ever actually talked 6 with Dr. Shirah, do you?</p> <p>7 A. He called Victoria. The day 8 after he found out I had to have surgery, 9 he called her, Dr. Shirah did.</p> <p>10 Q. Okay. Is that while you were in 11 the room?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay.</p> <p>14 A. He said, "I'll go get in touch 15 with her and see what she wants -- what 16 doctor she wants to send you to, and I'll 17 let you know."</p> <p>18 Q. Okay. So, he left the room, had 19 a conversation, and came back?</p> <p>20 A. Had the conversation with her. 21 "She said she'd get with you and tell you 22 where to go."</p> <p>23 Q. Okay. And she called you?</p>	<p>1 A. Not as I know of.</p> <p>2 Q. Okay.</p> <p>3 A. After he told them I needed 4 surgery, you know --</p> <p>5 Q. So, they never denied it, it 6 just took them too long to approve it?</p> <p>7 A. It just took them too long to 8 approve it, you know, to get my 9 surgery -- to approve it.</p> <p>10 MR. TINNEY: Well, now, I'm 11 going to object to the form of "denied." 12 I mean, we've gone over the call, you 13 know, stopping the surgery. I don't know 14 what your definition of "denied" is --</p> <p>15 MR. BROWN: Okay.</p> <p>16 MR. TINNEY: -- but it was 17 stopped.</p> <p>18 Q. (By Mr. Brown) Well, let me ask 19 it this way: They never told you, "You 20 cannot have surgery"?</p> <p>21 A. No, they didn't tell me I 22 couldn't have it. They just told me they 23 needed more doctors to look at it.</p>

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1 Q. Okay.

2 A. They just kept saying that every  
3 week.4 Q. What information do you say or  
5 do you contend that CMI withheld from  
6 you? What information do you think they  
7 had that they should have told you that  
8 they didn't tell you?9 A. I don't know. Just the only  
10 thing is she said she wanted two more  
11 doctors to look at it and she had to have  
12 paperwork -- proper paperwork. I don't  
13 know what she meant by that.14 Q. Okay. If somebody told you that  
15 you could go back to a doctor for your  
16 shoulder, would you go?17 A. If I thought it would do any  
18 good. Because he told me the last time I  
19 was there all he could do was give me  
20 Cortisone, that's about all he could do  
21 for it.22 Q. But if somebody said you could,  
23 you'd give it a try?

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1 A. Yeah, you know, if they could  
2 help it.

3 Q. Okay.

4 MR. BROWN: I think that's all  
5 the questions that I have. If I could  
6 reserve to do a follow-up if we learn  
7 anything else about any additional  
8 medical treatment that he could possibly  
9 have had. I'm not going to come back in  
10 here and rehash anything.

11 MR. TINNEY: No problem.

12 MR. BROWN: Thank you.

13 ~oOo~

14 The deposition of  
15 Emory S. Brown  
16 concluded at 1:45 p.m.  
17 on April 10, 2006  
18 ~oOo~

19

20

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22

23